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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555 (JMP) ; 08-01420 (JMP) (SIPA)
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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

August 25, 2010
9:38 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

1
2 CONTINUED EVIDENTIARY HEARING re (i) Motion of Debtor to Modify
3 the September 20, 2008 Sale Order and Granting Other Relief;
4 (ii) Motion of the Trustee for Relief Pursuant to the Sale
5 Orders or, Alternatively, for Certain Limited Relief Under Rule
6 60(b); (iii) the Motion of Official Committee of Unsecured
7 Creditors of Lehman Brothers Holdings Inc., Authorizing and
8 Approving (A) Sale of Purchased Assets Free and Clear of Liens
9 and Other Interests and (B) Assumption and Assignment of
10 Executory Contracts and Unexpired Leases, Dated September 20,
11 2008 (and Related SIPA Sale Order) and Joinder in Debtors' and
12 SIPA Trustee's Motions for an Order Under Rule 60(b) to Modify
13 Sale Order; (iv) All Joinders Thereto and Related Adversary
14 Proceedings; and (v) Motion of Barclays Capital Inc. to Enforce
15 the Sale Order and Secure Delivery of All Undelivered Assets
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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good morning.

3 MR. BOIES: Good morning, Your Honor.

4 THE COURT: Is there anything in the way of
5 housekeeping before we start?

6 MR. BOIES: I don't think so, Your Honor.

7 THE COURT: I gather from seeing this witness binder
8 that Stephen King is the next witness.

9 MR. BOIES: Yes, Your Honor. And Mr. Schiller will
10 take that witness.

11 THE COURT: Okay.

12 MR. SCHILLER: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. SCHILLER: It's nice to be back in front of you.
15 We call Stephen King, sir.

16 THE COURT: Mr. King, please raise your right hand.

17 (Witness duly sworn)

18 THE COURT: Be seated, please.

19 THE WITNESS: Thank you.

20 MR. SCHILLER: Your Honor, we provided an exhibit book
21 to the parties and to Your Honor. Mr. King, it's to your left,
22 I think.

23 DIRECT EXAMINATION

24 BY MR. SCHILLER:

25 Q. Where are you presently employed, Mr. King?

1 A. At C12 Capital Management which is a asset and hedge fund
2 manager based in New York.

3 Q. How long have you been there?

4 A. Just under a year.

5 Q. Before that, you worked for Barclays, didn't you?

6 A. Yes, I did, since 2005.

7 Q. Can you describe for His Honor the nature of your work at
8 Barclays?

9 A. Yeah. I joined in 2005 as part of the credit derivatives
10 business. I ran a group called PMTG, Principal Mortgage
11 Trading Group, which was a proprietary trading business which
12 towards -- in 2007 going to 2008, took on responsibility for
13 helping Barclays manage a large amount of its mortgage exposure
14 that it had accumulated through a variety of different
15 businesses. And in 2008, I facilitated with the asset
16 transaction that we're discussing today.

17 Q. By facilitated, you're saying that you worked on the sale
18 of Lehman to Barclays?

19 A. Yeah. I worked on the securities as for the economic --

20 Q. Over the weekend before bankruptcy, did you participate in
21 your team's work on that possible acquisition of the global
22 Lehman company?

23 A. In the runup to it, yes. We worked on certain assets.

24 Q. And were you advised on Sunday, September 14th that that
25 transaction was not going to go forward?

1 A. Yes, I was, yeah.

2 Q. On Monday, did you learn that there was another
3 transaction that you were to work on?

4 A. Yes, I did.

5 Q. What were you asked to do on Monday, September 15th?

6 A. I was asked to come back to the Lehman offices. I put my
7 team on standby back at the Barclays offices. And I was asked
8 to look at a revised schedule of asset types that could form
9 part of a smaller transaction than the one that we had been
10 looking at the week prior.

11 Q. During that period, the 15th and the 16th, do you recall -
12 - could you describe for His Honor what the conditions were of
13 the U.S. financial markets?

14 A. Yeah. There was -- I mean, there was and there had been
15 for some time tremendous uncertainty. But the bankruptcy of
16 the Lehman holding company had introduced a new level of
17 uncertainty because it was clear that certain -- although there
18 was a great deal of uncertainty as to how assets would perform,
19 how the U.S. housing market would perform, economic outlook.
20 And liquidity had been very bad for some time, in many respects
21 starting in 2007. The bankruptcy of Lehman introduced a new
22 uncertainty about how parties would face one another in normal
23 transactions. And so, even relatively liquid markets became
24 extremely fragmented and broken during that period.

25 Q. You mentioned your work for Barclays generally on

1 mortgages exposure. What was happening to assets like
2 mortgages that week or equities and corporates as well?

3 A. In many respects, all -- you know, we tend to use the term
4 "risk assets" to convey the sense that they are an asset type
5 which has a risk premium associated with them. All risk assets
6 were falling in dollar price terms during that period as
7 investors sought safe havens in increasingly short-dated
8 government instruments.

9 Q. On the 15th and the 16th, did you review the values of
10 mortgage-related assets? Do you recall their status?

11 A. Do I recall --

12 Q. Generally in the market?

13 A. Yes. I mean -- well, yes, because we were managing our
14 own positions as well as reviewing those of Lehman's. I mean,
15 we had sizable positions ourselves and we were attempting to
16 make decisions about what we would do with many of our own
17 assets and what we do if we were to acquire another large set
18 of assets which would be extremely difficult to liquidate just
19 given the absence of any buyers.

20 Q. That week, the week of the 15th, was there a market for
21 subprime mortgage-backed securities or the privately structured
22 COO obligations or CDO obligations, do you recall?

23 A. There's always a gray scale. So at the most, the nearer
24 end of the spectrum there were some indices in subprime that
25 had become quite popular to discuss. More recently, ABX is an

1 index of subprime bonds. That index was trading. Its market
2 was wide meaning that the gap between the bid and the offer
3 price the traders were willing to trade, it was wider than
4 normal. But it did trade. Cash bonds -- there were sellers of
5 cash bonds and there were distressed buyers. But the number of
6 participants was very, very small.

7 The more private-labeled stuff you describe had been for
8 some time and was going to remain so for a very long time very
9 difficult to find parties that were willing to enter into those
10 transactions because, in many respects, if they were privately
11 structured, they may well have been structured for an
12 individual. I mean, we came across structures like that as
13 part of the Lehman transaction, things that were structured for
14 Lehman to facilitate their financing or the position. And that
15 was never really intended to trade in the open market. So to
16 find a buyer who was then willing to value it or take
17 possession of it would be very difficult. And we call that by
18 appointment in general.

19 Q. Were you attempting early in that week to assess those
20 private label assets of Lehman in connection with the potential
21 transaction?

22 A. Yes. We had seen a number of them in the week prior and
23 in -- as part of the larger discussion and -- those days of the
24 15th and 16th. They take a long time, though. I mean, in many
25 cases, you need to obtain additional documentation to be able

1 to understand the structure. And it's not like you can just
2 look up on Bloomberg.

3 Q. Were there significant volumes of these kinds of assets on
4 the Lehman balance sheet that you saw early in the week of
5 September 15th?

6 A. Yes. Significant in dollars in numbers of singles of
7 billions of dollars. But in many respects, they carried a
8 significant amount of their risk within the portfolio because,
9 in many respects, and we've had first-hand experience of this
10 in our portfolio, you can have a security that you think is
11 worth a hundred million dollars or 200 million dollars and it
12 turns out to be worth nothing, just nothing, not a bit less but
13 nothing. And that's due to the complexity.

14 Q. Were government securities and agency securities of
15 uncertain value or changing in valuations that week?

16 A. Yes. And part of what the group -- my group does is --
17 and the firm still does is trade government securities and
18 agency securities. We tend to trade predominantly agency
19 securities that are issued by Fannie and Freddie which are the
20 two most common. But there are other agencies as well
21 including Tennessee Valley Authority, for example, which issue
22 very long-dated debentures to fund infrastructure bonds. But
23 also what I hadn't really thought about in the lead up to that
24 but it did dawn on me is that there's a group of bonds that are
25 issued by banks, European and U.S. banks, that are generally

1 traded by agency desks, callable bank bonds. And that
2 portfolio of agency securities was made up of those long-dated
3 agency bonds and bonds issued by U.S. and European financial
4 institutions. Of course, those were the ones that were those
5 sort of bonds and any inflation-linked bonds or bonds that have
6 embedded derivatives in them became very much more difficult to
7 value because of their optionality or their structure. Some of
8 those took a very, very long time for us to dispose of and were
9 very, very hard to risk manage. Obviously, government
10 treasuries and things short-dated were a little bit easier.

11 Q. Are you referring specifically then to Lehman assets that
12 included such bonds describing --

13 A. Yes.

14 Q. -- your efforts to assess their value?

15 A. Yes. The section that I think was described is government
16 and agency bonds that they had on their balance sheet which
17 wasn't an unusual label but it's a label that carries quite a
18 lot of different asset types in it.

19 Q. The distress you described on Monday and Tuesday, did that
20 continue through the week of the transaction?

21 A. It continued through the week, the year and is largely
22 still continuing in many markets.

23 Q. You mentioned that in order to assess the value of some of
24 these projects, label mortgage-backed securities and the like,
25 you needed to have paperwork that would explain --

1 documentation that would help you understand the nature of the
2 security.

3 A. Right.

4 Q. During the period of September 15,16, was Lehman able to
5 provide you with reliable and up-to-date information?

6 A. They were able to provide some. I mean, in many respects
7 it -- you know, some of this stuff is difficult to obtain its
8 information from -- the more structured transactions frequently
9 would have a trustee. The trustee may have reports that we
10 would like to obtain. It would be -- we had to go to the
11 trustee to obtain those. We might need to obtain an offering
12 document. It isn't necessarily the case that the trading desk
13 had ready access to that. So it was quite a complex process.
14 We started with the most easy to evaluate and worked steadily
15 towards the more complex.

16 Q. How up-to-date was the information that Lehman provided
17 you on Monday and Tuesday of that first week?

18 A. Well, on the Monday when I was called back to Lehman on
19 the Monday, I think the only thing that I immediately had was
20 the snapshot balance sheet for the close of business on the
21 12th. And they were in the process of attempting to provide us
22 the list of CUSIPs, the numbers, the labels that I used to
23 identify the securities that made up that balance sheet. That
24 took a number of days to reconcile. I don't think we have a
25 work on top of anything later than the 12th balance sheet.

1 And --

2 Q. So after the -- I'm sorry.

3 A. And then we had to find out what were the types of
4 secur -- you know, what the name of the security was to go with
5 the CUSIP, what the type of security was. There was a sort of
6 filtration and organization process that we followed through
7 those days.

8 Q. You say you received at the beginning of the week a
9 balance sheet of September 12th's --

10 A. That's correct.

11 Q. -- market activity. Did you receive thereafter that week
12 from Lehman a balance sheet of activity on the 15th or activity
13 on the 16th?

14 A. I don't -- I really don't think so. I think it was the
15 12th we worked on and then later on in the week that it was
16 superseded by other versions of the transaction anyway.

17 Q. You're referring to the repo?

18 A. Yes.

19 Q. Did the status of the information flow from Lehman impact
20 your ability to assess the value of the assets you and your
21 team were reviewing?

22 A. Yes. I mean, it was -- you know, this was -- the amount
23 of information that needed to be gathered to be able to
24 adequately analyze thousands of line items of securities worth
25 billions of dollars in an uncertain marketing environment would

1 be difficult. We had found it difficult over the previous
2 years. You know, we had been doing this for a year and a half
3 now analyzing our own benefits. So even when you've got time
4 and -- to organize yourself, it's difficult. In that week,
5 with an entity which was in a considerable amount of turmoil, I
6 think it was very difficult for Lehman to be able to deliver a
7 lot of the information that we wanted. So we went to whatever
8 source we could to find it. But it took time.

9 Q. Did the quality of the information or the absence of it
10 impact the risk to Barclays of this transaction in your view at
11 that time?

12 A. Yes, very much so, inasmuch as there were securities --
13 well, there were two aspects of it. One, the balance sheet
14 itself -- I think one of the problems was that the balance
15 sheet itself was changing so very, very rapidly during those
16 first two days because securities were bring bought and sold by
17 the entity and positions were being closed out. So the balance
18 sheet itself was changing. So you had a constant moving
19 inventory of items that needed to be analyzed. So that was one
20 layer of risk.

21 And then another layer of risk was the instruments
22 themselves were in distress and were, in many respects, you
23 could look at a CUSIP or a name of a security and have
24 absolutely no idea what it was. Absolutely no idea. And even
25 if someone said to you oh, it's a whole business securitization

1 or it's a so-and-so, that's not enough to go on. I mean, you
2 need to have information. It takes time to analyze it. And
3 that's --

4 So the availability of information was definitely a
5 challenge and the fact that the inventory itself was changing.

6 Q. In terms of the inventory that you first received -- you
7 told the Court you received a September 12th balance sheet. Is
8 that right?

9 A. Yes.

10 Q. And do you recall generally when you received it?

11 A. I think the first time I saw that was on the Monday
12 afternoon/evening that I arrived at the Lehman offices.

13 Q. Okay. Let me ask you to turn to what I hope is tab 2 in
14 your book.

15 MR. SCHILLER: BCI Exhibit 191, Your Honor.

16 Q. Is this the -- let's look at the first page of this
17 document. Who's Jasen Yang? Could you identify him for Judge
18 Peck?

19 A. Jasen is a structuring trader who works -- worked for me
20 and still works for me.

21 Q. Was he working for you at that time on this transaction?

22 A. Yes, he was.

23 Q. And who is James Walker?

24 A. James Walker's official title, I think, was the U.S. CFO
25 at Barclays at the time.

1 Q. And if you turn to the second page, you'll see at the top
2 left side "Lehman Balance Sheet by GAAP Asset Types -
3 9/12/2008".

4 A. Yes.

5 Q. Did you work from this balance sheet at the beginning of
6 the week with your team?

7 A. Yes, I did.

8 Q. Is that your handwriting on the --

9 A. Yes, it is. Most of it is, I think.

10 Q. And does this balance sheet reflect the activity from
11 September 12th?

12 A. I believe it to be a -- the close of business on the 12th
13 balance sheet as provided by Lehman.

14 Q. Now you mentioned that you also received backup for this
15 balance sheet. I think you referred to it as CUSIP backup.

16 A. Right.

17 Q. Can you turn to tab 4 in your balance sheet -- 4 in your
18 notebook?

19 A. Sure.

20 Q. This is a document dated Monday, September 15th to you
21 from Mr. Clement Bernard.

22 A. Yes.

23 Q. Who is he?

24 A. Do you know what? I don't remember.

25 Q. Is he a Barclays person or a Lehman person as far as you

1 know?

2 A. I could probably work it out but I don't remember.

3 Q. All right. Below, in an e-mail to you from Michael

4 McCarvey -- can you identify him?

5 A. No. I don't remember. I mean, unfortunately, there were
6 so many people involved at that time.

7 Q. Okay.

8 A. I don't remember these people.

9 Q. Well, you see the subject is "LBI Balance Sheet detail".

10 A. Yes.

11 Q. Is this the kind of document you received -- do you think
12 you received Exhibit 909?

13 A. Yes. This is an example of it, yeah.

14 Q. And it says, "Please see the attached long inventory
15 balance sheet detail for LBI as of September 12th" --

16 A. Yes.

17 Q. "2008."

18 A. Yes.

19 Q. "Please note that this includes all of LBI except the
20 equities division which should be sent very shortly." Can you
21 describe this document to the Court in terms of what it
22 contains generally?

23 A. Yes.

24 MR. TAMBE: Objection, Your Honor. Lack of
25 foundation. He didn't prepare that document. He can describe

1 the content but he can't describe what basis. He didn't
2 prepare it.

3 THE COURT: Well, maybe we can get at it with another
4 question or two. But I think all the question is asking is for
5 the witness to describe a document that I presume he was
6 familiar with at the time. So I don't think there's much of a
7 problem with the question. Why don't we at least establish
8 that he has sufficient familiarity with the nature of the
9 document to be able to describe it?

10 Q. Do you recall whether at the beginning of the week your
11 team worked with Exhibit 909?

12 A. I remember that they worked with 909 and -- so this and
13 other files, many other files, like it in an attempt to put a
14 full list of the instruments that would, in aggregate, make up
15 the value that was reported on the summary balance sheet as of
16 the 12th. And I remember that that was a very complicated --
17 there were many iterations of that. And I think even later on
18 in the week it still wasn't complete. It wasn't just the
19 equities that were incomplete.

20 Q. And please tell the Court what level of information this
21 provided to you and your team. These are not every day
22 documents for the rest of us.

23 A. Right. So it would -- it is an -- it would come from an
24 inventory system at Lehman. It would describe -- you can see,
25 it does describe as an example various internal classifications

1 that Lehman has labeled. Each line is a security, a single
2 security. There is an amount of the security. There is the
3 CUSIP of the security. And there is a name of the security in
4 most cases. The name isn't always as obvious as one might
5 think. That's the column product name. Even professionals
6 that deal with these securities all day every day can't read
7 that list of names necessarily and instantly tell you what
8 everything is. Ballantyne, for example -- one row that
9 Ballantyne taxable notes A-3 B. There's no way to say oh, I
10 know that security. And there were amounts -- I can't remember
11 what else is on here. And there's an attempt -- and I seem to
12 remember what we were trying to do at the time, mostly Jasen
13 and my team, were attempting to make sure that these
14 classifications -- an amount of each security would add back up
15 to the balance sheet that we were looking at as of the 12th so
16 at least we would know if we were going to do a line by line or
17 even group by group analysis of the potential value of those
18 assets that we were working with a -- the full population.

19 MR. SCHILLER: Can we just put 191C up on the board,
20 please? This is a cleaner typed version, Your Honor, of 191.
21 Q. Could you point out to the Court what you mean by trying
22 to tie the backup into the balance sheet for your value
23 assessment?

24 A. Sure. The question that was being asked of me of -- at
25 its most colloquial level was the column that says "Net Long

1 Inventory" -- the question that was being asked of me was,
2 Stephen, what do you think that is worth? And to be able to
3 answer that question, I would need to know what made up each of
4 those numbers. For example, corporate stocks and options
5 total, 8,431,000,000 et cetera. You know, that must be made up
6 of a very substantial -- I mean, this report sort of shows just
7 quite how many line items must make up that eight and a half
8 billion dollars. The very first thing that I wanted to do was
9 to make sure that we knew that we had a finite population of
10 instruments that made up that 8.43 billion at least as of the
11 12th.

12 Q. So the exhibit you're looking at, 909, was a thick stack
13 of these numbers?

14 A. Yes. And there were many more to go with that.

15 Q. Let me ask you to turn to BCI Exhibit 910 --

16 MR. SCHILLER: -- which is tab 5, Your Honor, in the
17 book --

18 Q. -- and ask you to identify this document for the Court.
19 It is a -- begins with an e-mail to you from Mr. Yang dated
20 Monday, September 15th.

21 A. Right.

22 Q. And the subject is "LBI Balance Sheet Detail as of
23 September 12th - Corporate Equities".

24 A. Yes.

25 Q. What information did this provide you and your team?

1 A. This was being sent to me by Lehman. I think it was one
2 of several that were sent to me. I tried to get these to be --
3 I think subsequently, I tried to get these to be sent directly
4 to Jasen and the team. But this is, I think, supposed to be
5 the detail that should add up to the September 12th -- if they
6 all worked, the column -- 1, 2, 3, 4 -- across on the detail
7 behind this e-mail. It says "long". One would hope that the
8 sum of all of those positions should add up to the corporate
9 line item on the summary balance sheet.

10 Q. And these positions were Lehman's marks as of September
11 12th activity?

12 A. I believe that to be true, yes.

13 Q. And did you use Exhibit 910 in your work that week?

14 A. Yeah, and other ones like it.

15 Q. Let me ask you to turn to BCI Exhibit 912 which is tab 6
16 in your book, Mr. King. And that is another September 15th e-
17 mail sent to you. The subject is "LBI Balance Sheet Detail as
18 of September 12th - Corporate Obligations". Is this similar to
19 the other data we've discussed in terms of its purpose and your
20 use of it?

21 A. Yes, it is.

22 MR. SCHILLER: Your Honor, we move the admission of
23 BCI Exhibits 909, 910 and 912?

24 THE COURT: Is there any objection?

25 MR. TAMBE: No objection, Your Honor.

1 THE COURT: They're admitted.

2 (BCI Exhibit 909, e-mail from Clement Bernard to Stephen King
3 dated 9/15/08 re LBI balance sheet detail as of 9/12, was
4 hereby received into evidence as of this date.)

5 (BCI Exhibit 910, e-mail from Jasen Yang to Stephen King dated
6 9/15/08 re LBI balance sheet detail as of 9/12 - Corporate
7 Equities, was hereby received into evidence as of this date.)

8 (BCI Exhibit 912, e-mail from Jasen Yang to Stephen King dated
9 9/15/08 re LBI balance sheet detail as of 9/12 - Corporate
10 Obligations, was hereby received into evidence as of this
11 date.)

12 Q. Now you mentioned a moment ago that these contained the
13 Lehman marks following the activity in the markets of September
14 12th, this data, correct?

15 A. Yes. I think that's right. Of course --

16 Q. Did you receive, as far as you can recall, updated marks
17 from Lehman after this at any time prior to the closing?

18 A. Not as far as I recollect. I don't think so, no.

19 Q. Now you've testified that the market dropped dramatically
20 following the Lehman bankruptcy over the weekend. When you
21 received the balance sheet with the September 12th marks, when
22 you received that on Monday the 15th, did you have concerns
23 whether Lehman had title to the assets referenced in the
24 balance sheet and listed in the data we've just looked at?

25 A. Somewhat strangely, on the evening of the Monday the 15th,

1 I actually didn't think much about it. You know, I just was
2 asked -- and it was a pretty hectic time. And I was asked of
3 my opinion on what the value of these assets were. I didn't
4 actually give much consideration to the idea that we might not
5 be able to get the assets. That did dawn on me and others over
6 the subsequent days as we were unable to get a definitive list
7 of the securities that Lehman still had in its possession. And
8 we started to realize just quite how much the balance sheet was
9 changing. And then late -- and then before the repo
10 transaction occurred, we realized that much of the
11 re-hypothecation process that had occurred through repo had
12 meant that Lehman, the U.S. entity, no longer had much
13 collateral that it was reporting on its accounting balance
14 sheets. So it was going to be a difficult exercise. But not
15 on the Monday evening. It really happened during that night,
16 the next day.

17 Q. Incidentally, was it Barclays' management that asked you
18 to try to value the assets on that balance sheet?

19 A. Yes. Yes, absolutely.

20 Q. When you approached that task with your team at the
21 beginning of the week, were you familiar with Lehman's marking
22 policies or practices?

23 A. No. No. Other than to the extent that they have some
24 similarity presumably through the various accounting standards
25 and bodies. So it wouldn't be completely alien but I wouldn't

1 know their own individual policies. It would be impossible for
2 me to know that.

3 Q. As you looked through the data that we just looked at and
4 other data that you've said that you received that was similar,
5 could you determine whether Lehman was updating its marks
6 regularly for illiquid assets of the kind you described to the
7 Court earlier?

8 A. I'd hate to say -- I don't -- one, I don't know what the
9 last timestamp for an update would have been attributed to each
10 of the line items that made up the September 12th balance
11 sheet. So presumably, some were updated very recently and some
12 were not updated as recently. In practice, it always is very
13 difficult to update the valuations of securities where you
14 don't see the security trade. You might see something similar
15 trade or you might see -- you might be just inferring it from
16 any number of other assumptions. So I would be surprised even
17 if in normal circumstances Lehman was updating them right up to
18 the minute. But on the other hand, they were also -- it was
19 very, very unusual times. So I have no idea. I would think it
20 would be a very, very difficult task for them to do.

21 Q. Well, as a general proposition, is the marking of illiquid
22 assets done on the same schedule or a different schedule than,
23 say, corporate equities in your practice?

24 MR. TAMBE: Objection. Lack of foundation.

25 THE COURT: It's sustained although I think that this

1 witness has already demonstrated by his answers to this point
2 that he should be in a position to be able to comment without a
3 foundation question. But as a technical matter, the objection
4 is sustained and we'll do this the hard way.

5 MR. SCHILLER: Okay. Judge, I think I want to move on
6 anyway to what's of interest to you. And that is the valuation
7 process in which Mr. King was engaged which will take up
8 this --

9 THE COURT: Does that mean you're withdrawing the
10 question?

11 MR. SCHILLER: This will take up the illiquid asset
12 issue. Yes, I'm withdrawing the question.

13 Q. During the September 15, 16 period, were you aware that
14 Barclays' negotiators were negotiating with Lehman negotiators
15 concerning the possible purchase of LBI?

16 A. Yes, I was, yes.

17 Q. Now you've said that Barclays asked you to estimate the
18 value of the assets that were on that September 12th balance
19 sheet that was shown to you, Exhibit 191. Can you describe for
20 the Court how you and your team went about that on Monday,
21 September 15th, and Tuesday?

22 A. Yeah. We tried to follow the same process that we had
23 followed the prior week and that we had followed in evaluating
24 large groups of securities that we'd seen on Barclays' own
25 balance sheet. The first thing was to start at the very top,

1 just see what overall it look -- how much did we have of what
2 type of securities. We were familiar -- we work in the same
3 industry so some of the classifications are familiar to me even
4 though they may be misleading in some respects. For example,
5 it is common to call many different types of securities,
6 mortgage-backed securities that aren't necessarily mortgage-
7 backed securities. Things like credit card receivables or
8 franchise loans or whole business securitizations can often --
9 we ourselves would often just call them those are the -- those
10 are part of the mortgage-backed securities book.

11 So we'd have some idea at the very highest level of what
12 the categories of securities were. What I did while I was at
13 the Lehman office was try to evaluate what was likely to be
14 the -- my best estimate of what would be the realizable value
15 in a -- you know, the maximum realized value that I could
16 credibly commit to my management team that I thought I could
17 achieve in an organized and orderly or controlled way.
18 Meanwhile, I had my team back at Barclays starting to
19 accumulate all of the supporting data for that balance sheet,
20 reconcile it with the work that we had done the previous week
21 where possible, because there should be some overlap with some
22 of the work we'd done the previous week, and start the wheels
23 turning again because, obviously, we'd decommissioned our
24 efforts on Sunday, to continue to evaluate the individual line
25 items and put on a -- eventually, and it took a very long time

1 to do -- a line by line estimate of what we thought we could
2 realize on the security.

3 Q. When you say realize on the security, are you talking
4 about the ability to sell the security after you acquired a
5 sale that was done? I think you said it would be done in an
6 orderly way.

7 A. Well, sell all the -- would eventually be realized on -- I
8 mean, some of the securities, it was going to be the case that
9 they would never be sold. There was no market for them. But
10 they would actually just crystallize cash of a certain amount
11 over days, weeks, years. And that was the objective for some
12 of them.

13 Others clearly could be liquidated, some more readily than
14 others. But even the ones that were -- would have the feeling
15 of being more readily liquidated, like publicly traded
16 equities -- my group didn't trade a large amount of publicly
17 traded equities at that time. But I can tell you that those
18 markets for individual stocks around the time of the Lehman
19 bankruptcies were extremely difficult to trade particularly
20 when you owned very significant numbers of shares. So we had
21 to try and make an estimate of -- okay, so if we, in a very
22 sensible way, seek to monetize the value of this through hedges
23 and disposals over a period of time, how much do I think I can
24 get. That was what I was being asked.

25 Q. So in terms of what you could get in the market for the

1 value of these assets after you acquired them, that's what you
2 were trying to estimate and provide to management --

3 A. Yes.

4 Q. -- that week?

5 A. Yes.

6 Q. What level of confidence did you have in your assessment
7 of such market values?

8 A. It was -- I mean, the business that I ran was a reasonable
9 sizeable trading business. And it had the right to trade about
10 a billion dollars or so of capital. This was fifty billion
11 dollars of securities many of which had never traded and we had
12 never seen before and that we know very little about. So the
13 securities themselves were incredibly difficult to assess.

14 The markets were themselves very, very broken. So it was
15 very difficult to know just quite how many people -- if my
16 management said to me, okay, Stephen, can you now own the
17 securities? You can start to monetize the value of them
18 through disposals or hedges or whatever -- 'cause I didn't know
19 even that at that time, you know, how much I could actually do
20 anything with the risk that I was potentially going to be
21 taking on. But, in aggregate, that meant that it was very,
22 very difficult to put an assessment on.

23 And I think that was one of the challenges that I had at
24 the time, particularly on that Monday evening where I knew that
25 my management team were negotiating a transaction. And an

1 answer that I could not give was I don't know. I couldn't give
2 I don't know. I had to give a reasonable estimate. And trying
3 to articulate to them but there is a lot of risk. And that
4 risk, by the way, wasn't being measured in hundreds of millions
5 of dollars of uncertainty around my estimate but in billions of
6 dollars, you know, while taking into account the fact that we
7 had to be very sensible, that we weren't taking on risks that
8 we really had absolutely no way to control or understand.

9 So it was a very, very unusual and unprecedented process
10 for, I think, us to be in.

11 Q. This was an unprecedented process for you to be in?

12 A. For the firm, for me and unprecedented market conditions
13 as well to be doing it in.

14 Q. How many years before September 15th had you been trading
15 in these markets?

16 A. I started at Bankers Trust in the late nineties. I had
17 good familiarity with these markets -- and not all of the
18 instruments that were in that fifty billion portfolio --
19 publicly traded equities were not the -- were treasuries, were
20 not -- certainly in these volumes were not our normal business.
21 But it was -- when you say so many of them, they start to take
22 on actually some of the characteristics of the much more
23 illiquid and broken securities themselves.

24 Q. You say the market was broken. Are you referring to the
25 illiquidity? Are you referring to the absence of buyers? Can

1 you tell the Court what you mean by the market was broken as
2 you looked at it to try to value these assets?

3 A. I tend to -- we -- the business that I'm in does deal with
4 complex securities and we are used to trying to eliminate
5 ambiguity associated with definitions and words that are very
6 easy to use but can lead to considerable differences between
7 two parties who are seeking to negotiate something. I don't
8 particularly know the difference between liquidity and were
9 there any buyers or sellers. I mean, to me they're the same
10 concept. If there are no buyers, there is no liquidity. So
11 that's really what we're saying is that around that time and
12 for a very long time before and, as we note, for a very long
13 time following it, way into 2009, there were no buyers. Or,
14 even -- and that term's a bad term itself. It's not that there
15 were no buyers. There are buyers. But their prices that they
16 may want can be incredibly low. They may not want anywhere
17 near as much as you own or want to sell. And so it can be a
18 very, very -- and the time that they would want to take to do
19 their analyses and reach their decisions and get their
20 approvals was increasing and extending significantly. And so,
21 that absence of number of parties in the market at the time in
22 all of these markets is what is really meant by the liquidity.

23 The broken aspect of it, I think, is even broader which is
24 there were parts of the market that had been of the normal
25 functionality of the market had just assumed to always being

1 there and worked like repo that suddenly people were
2 questioning, well, what does it mean -- just what does it mean
3 to repo something? If I bond and I repo it, will I be able to
4 get it back if the financial system falls into complete decay?
5 Because, after all, it wasn't necessarily the assumption that
6 Lehman was the last financial institution that was going to
7 default at that time. Not by a long stretch.

8 Q. Now you mentioned you were trying to develop some credible
9 estimates for management.

10 A. Yes.

11 Q. Were these subjective?

12 A. You know, I -- it's my job to try to be as objective as
13 possible. But it's impossible not to be subjective. And
14 you're using all of the informa -- a person who's using all of
15 the information that is available to them to make their own
16 assessment of value -- I was, I think, very privileged to be --
17 being asked by my firm to give my opinion and that they would
18 be using that in some way in their discussions. But it was --
19 it was subjective with as much of the subjectivity eliminated
20 as possible where we were able to find benchmarks or something
21 that we could point to to say, well, let's rely on the
22 following because that's a pretty good indicator.

23 Q. You mentioned billions of dollars of uncertainty with
24 respect to valuation earlier. Was part of what you and your
25 team was doing that week simply guesswork?

1 A. I -- we deal with uncertainty and risk every day in the
2 business. And I hate the word "guess". It -- you know, in
3 some ways, it feels like it sort of demeans what we do. But on
4 the other hand, we were trying to form an expectation of a
5 value of stuff about which we didn't know very much. So I'd
6 rather avoid the word "guess" but it was an estimate, an
7 expectation of both the value and the risk. Don't forget we
8 were trying to estimate value and risk because we had to risk
9 manage it the moment that we took ownership of it. Those were
10 extremely difficult things to do.

11 Q. Was your team trying to work through the positions that
12 were reflected in the data you received on Monday and Tuesday?

13 A. They were trying to work through them and they were trying
14 to lever -- I mean, the resource that was mobilized inside
15 Barclays to complete this process was enormous. And my team at
16 the time was about twenty-five people or something. I can't
17 even remember exactly how much it is. It kept swelling around
18 this time as we sucked in more resource. But they were
19 leveraging other experts within the business, the individuals
20 that ran the various desks at Barclays. And I think they were
21 also talking to people at Lehman to try and gather information.
22 So that they weren't just doing it in isolation. They were
23 using as much of the resource -- to pulling as much of the
24 resource at Barclays as they could.

25 Q. Were they having difficulty coming up with even rough

1 estimates?

2 A. On some things it was impossible to. On some things we'd
3 have a CUSIP and it would be called "bank note". There's
4 nothing -- you don't do anything with a CUSIP and "bank note".
5 So, yes, that was very, very difficult.

6 Some things were easier to at least identify. But then
7 you still had the question of right, but how difficult is it
8 going to be to realize that value.

9 Q. Do you recall how long it took for Barclays to determine
10 the values of the various assets that it ultimately acquired?

11 A. Well, you know, that's a -- that's an open-ended -- it's
12 an open-ended process. The way that we approached it, the way
13 we approach similar smaller exercises to this and that we had
14 been working with with Barclays on in the previous years was to
15 form an estimate, form a better estimate, form a better
16 estimate, form a better estimate. And just keep going until
17 it's gone. Once it's gone then at least we can stop.

18 Q. Were your estimates different from Lehman's estimates that
19 week?

20 A. Yeah, I would ass -- I think -- yeah. I would assume so,
21 yes.

22 Q. Did it turn out that some of the assumptions you made,
23 some of the subjective estimates you made and reported to your
24 management were wrong?

25 A. Yes. I think we made some good and some bad estimates and

1 assumptions. And those were continually revised.

2 Q. Can you give the Court an example of an assumption you
3 made that turned out to be incorrect?

4 A. I'm trying to think of different security types and things
5 that there were at the time.

6 Q. What about government and agency securities?

7 A. Government and agency securities -- agency securities --
8 you know, agency securities, in particular, was remarkable.
9 And even I was prone to think of agency security markets as
10 being liquid deep markets meaning that they were adequately
11 international, the buyers and sellers of them were very large.
12 Therefore, the institutional support for the trading of that
13 product should be good. So it ought to be straightforward. In
14 reality, that was categorically not the case about that time
15 and in the following months, not just days. Months and months
16 and months. I can't remember how many billions of dollars of
17 agency securities that we picked up. But it was of the order
18 of sort of five to ten -- five to ten -- five plus billion
19 dollars. I forget now. That took months to realize because
20 they were very, very long dated securities that were either
21 issued by, as I said, banks -- which I hadn't really given
22 thought to -- banks or agencies of the -- that didn't
23 necessarily have the full faith and credit of the U.S.
24 government. They had implicit benefits of guaranty. And so,
25 as a result, the number of participants in that market shrank

1 enormously because of the uncertainty.

2 It was also shrinking because the repo market -- the
3 willingness of banks to lend people money to buy things like
4 agency securities was dwindling. There was no lending. The
5 net result was that really the liquidity of that product was
6 extremely poor. And I remember we saw a sort of swing of about
7 300 million dollars of loss on that portfolio at one point
8 which was very significant in comparison to what I would have
9 originally estimated. And that's even taking into account
10 interest rate hedges which were really very, very difficult to
11 manage because there was -- when people say "hedge", again,
12 that's one of those words that sound simpler than it is.
13 You're actually buying one thing and selling something that's
14 not exactly the same thing. So it is possible that your hedge
15 doesn't work and the security goes up. And rather than the
16 hedge going down, the hedge goes up. And we experienced that
17 with those agency securities.

18 Q. When you say to the Court you were trying to determine
19 what the realized value is of something like government and
20 agency securities for your management, are you talking about
21 the price at which Barclays can sell those to a willing buyer?

22 A. Yeah. All that would ultimately just be realized by
23 holding the security and allowing the cash flow to be
24 generated. But --

25 Q. But as to these, were you assuming you could sell them

1 more quickly than it turned out? I'm talking about the
2 government.

3 A. With the government's -- I thought the government
4 securities would be much easier to sell than it turned out that
5 they were. That was -- that portfolio itself took months and
6 months of -- that and some of the equities took months and
7 months and months to dispose of.

8 Q. If you'd guessed correctly, would you have given them a
9 different value on Monday, September 15th?

10 A. Yes, I would have. Yeah, definitely, because I was
11 attempting to take into account -- I was attempting to take
12 into account what I thought I could obtain from either sale or
13 just allowing the securities to monetize, majority of them
14 sell, if over a period of time, using some of the risk
15 management techniques that we had come to use in smaller and
16 similar situations, we steadily ran off the book, which was the
17 intent -- would have been the intent and how much would that
18 cost me to do. And in a situation where there's a tremendous
19 amount of price uncertainty as well as a dwindling number of
20 buyers then the overall realizable dollar value I ought to be
21 able to obtain would be less.

22 Q. On Monday night, were you able to -- did you attempt to
23 value the mortgage-backed securities of Lehman?

24 A. Yes. We put our first estimates on it, yes.

25 Q. Do you remember how your values that night compared to

1 Lehman's marks on that group of assets?

2 A. Yeah. I remember that I estimated -- I think there were
3 about -- I've got the balance sheet here, haven't I? It was
4 about six and a half billion dollars of securities in that
5 category according to Lehman. And I --

6 MR. SCHILLER: For the Court and the witness, could we
7 put up 191C? Point that out to the Court, please.

8 A. Right. So row -- 1, 2, 3, 4, 5, 6 --

9 Q. Toward the bottom.

10 A. The bottom -- second from the bottom, "Total Mortgage-
11 Backed Securities". As I said, this wouldn't just be mortgage-
12 backed securities. This would be other instruments as well.

13 Q. You had uncertainty as to what was in that?

14 A. I had uncertainty. But I kind of knew what they had from
15 looking at some of it the week before. And I estimated that
16 that would be worth, you know, at best, about half of what
17 Lehman had it marked at on the Friday evening.

18 Q. On Monday, you thought that that value was worth about
19 half --

20 A. Yeah. So --

21 Q. -- of what was listed there.

22 A. -- about 3.25 billion dollars less.

23 Q. Did you discuss that Monday with Lehman directly?

24 A. I ended up doing so. Well, the first thing I did was when
25 I was going through this list and getting some guidance back

1 from my team at Barclays was to advise my negotiators, my
2 management of what I thought was a reasonable estimate of what
3 could be realized on this. And I provided that to my
4 management. Later on in the evening, and I can't remember what
5 the time was, my management came back to me and said, well,
6 they're a little incredulous at what your view of the mortgage-
7 backed securities are. So they --

8 Q. Incredulous that they were worth fifty percent of the
9 marks?

10 A. They're worth fifty percent. They didn't say anything
11 about the overall amount that I view, so how -- you know, how I
12 valued the other things. But they did comment on that. And I
13 was sent to talk to Bart McDade which I did. I know there were
14 other people present as well but I really can't remember. It
15 was literally right in the center of the floor, 31st floor or
16 whatever it was, at Lehman. And he said why do you think
17 they're so low. And I can't remember the exact answers that I
18 gave but it was certainly along the lines of the answers that
19 I've given to you earlier. And I said, no, I think I'm right.
20 That's -- look at the following. Look at this; look at that;
21 look at the following issues. I think this is the right -- I
22 own similar securities to some of these. And I know I own them
23 at a lot less than you've got them marked.

24 Q. Barclays' securities, you're referring to?

25 A. Yes. And so, they went away. And I think later on we

1 were told that we wouldn't be taking all of the mortgage-backed
2 securities.

3 Q. If you were right about the value of that category, what
4 was Mr. McDade's loss that night?

5 A. On that -- if I was right --

6 Q. Yes.

7 A. -- then that would be 3.22 billion dollars or so.

8 Q. Less than what they had marked it at. And you're talking
9 about your ability to sell that in the market over time.

10 A. Yes.

11 Q. Now, you said you provided the Barclays negotiators with
12 your team's assessment of the market value of these assets,
13 your ability to sell them to willing buyers over time. What
14 was their response when you presented them with your valuations
15 that week? Let's focus on Monday, Tuesday. Generally.

16 A. What was my management's response?

17 Q. Yes, to you. What was the nature of their discussions
18 with you if you can remember them generally for the Court?

19 A. They were very -- I mean, they were very anxious. You
20 know, I thought this was an enormous transaction that the
21 capital that the firm would be putting at risk was very, very
22 significant. And there were a lot of questions. There were a
23 lot of other people involved. They wanted to know, have you
24 talked to so-and-so, have you thought through it, how bad could
25 it be, et cetera. Those were -- it was really a downside risk

1 discussion. You know, how are we going to manage it, what are
2 you going to do, how should we deal with it. There were a
3 plethora of questions.

4 Q. Did those discussions concern whether they wanted to go
5 forward with the transaction based in part on your valuations?

6 A. Well, I know that this would have fed into that decision
7 as to whether or not to proceed with the transaction. I wasn't
8 directly involved in the negotiations that my management were
9 having. But clearly, the information that I was providing to
10 them about what was happening to this portfolio are
11 difficulties in getting a clear read on exactly what was still
12 owned, what was owned was worth and how we were going to risk
13 manage this. You know, immediately -- once we actually knew
14 that we had possession of it, how we would risk manage it.
15 Those were the things that I was highlighting to them

16 Q. You mentioned earlier to the Court that at the very
17 beginning you weren't concerned about whether they had titled
18 these assets but you became concerned as the week went on. Did
19 you become aware that Lehman assets were being seized?

20 A. Well, we knew that the other -- what was interesting was
21 that we knew the other Lehman entities were bankrupt at this
22 point and that -- not all of them but many of them and that the
23 securities that they had on -- that many of their positions
24 were being closed out by counterparties. And then I remember
25 that one time we saw a security that we thought we owned being

1 disposed in a liquidation. So there was -- this wasn't the
2 process that we were using. But in many closeouts there'll be
3 an auction where the lender just asks multiple counterparties
4 to bid on a portfolio securities at a particular hour. They
5 provide their bids and they sell them to the highest bid.
6 That's the -- I think that's fairly well understood. Well,
7 what was funny was we saw some securities on that list -- I
8 can't remember what they were now -- but that we thought we
9 owned. And then it started to dawn on us that what had
10 happened was that LBI had financed positions within its own
11 group so that it had lent them to LBIE, for example. And LBIE
12 financed LBI. And then LBIE financed them, for example, with
13 the ECB. And then the ECB was closing out LBIE.

14 Q. ECB is the European Central Bank?

15 A. That's correct. So then we realized well, actually, we
16 may not -- do we actually have all of this collateral or is
17 it -- is that whole process of financing way more complicated
18 than we thought, let alone the fact that clients of LBI are
19 themselves willingly closing out transactions directly with
20 LBI. So the LBI balance sheet was shrinking. Actually, they
21 may not even have some of this stuff.

22 Q. Did that create uncertainty for Barclays?

23 A. It created a lot of uncertainty. And I don't really
24 remember exactly what happened during that bit because then it
25 was quickly superseded -- at least my involvement was quickly

1 superseded by can you look at the Fed repo facilities.

2 Q. Did those seizures increase risk for Barclays?

3 A. Yes, because in addition then to the uncertainty about
4 what the line items were, the uncertainty about the markets
5 within which they would be traded, there's also now uncertainty
6 as to whether or not we would have the collateral.

7 Q. I understood your reference to assets that you acquired to
8 be referenced to the APA. So let me ask you about the asset
9 purchase agreement which was given to His Honor Wednesday of
10 that week, on the 17th. Are you familiar generally with the
11 definition of the "purchased assets" in the APA?

12 A. Yes. I've seen it at various times, yes.

13 Q. If you turn to tab 7, page 6, you'll see the definition of
14 "purchased assets". And I direct your attention to
15 subparagraph (d) there. The definition of long positions,
16 having a book value of approximately seventy billion. Do you
17 see that?

18 A. Yes.

19 Q. Does that include mortgages?

20 A. No. I think that's included in (e).

21 Q. You see the reference to the collateralized short term
22 agreements?

23 A. Yes, I do.

24 Q. Do you recall what those were?

25 A. I don't really remember. We didn't do much work on them.

1 I remember they were separate line items.

2 MR. SCHILLER: Let me ask you to put up the Berkenfeld
3 schedule, 106.

4 Q. This is a document I don't think you saw at the time. You
5 can tell the Court whether you did or didn't. Did you see this
6 on September 15th or 16th?

7 A. No, not at the time.

8 Q. Let me direct your attention to the collateralized ST
9 agreements there as an asset with a value of ten billion. Do
10 you see that?

11 A. Yes, I do.

12 Q. Does that refresh your recollection of what that item was?

13 A. Yeah. I just -- I remember it was a separate line item
14 from the ones that we were looking at. And I can't remember
15 exactly what it was. I think it was short duration instruments
16 of some sort.

17 Q. Short duration instruments of some sort. Did you try to
18 value these? Were these important to your work?

19 A. No. We didn't look at those.

20 Q. Okay. So then that item and those ten billion were not
21 part of your valuation efforts?

22 A. No.

23 Q. When you say short term loans, can you illuminate that a
24 little bit? What does that mean -- for the Court?

25 A. No --

1 Q. Lehman loans, you mean?

2 A. No. I think they were -- I can't remember of what they
3 were. I thought they were like bits of -- there's -- 'cause
4 it's on the other side of the balance sheet as well. I think
5 it was -- I can't remember what it was made up of, to be honest
6 with you. Commercial --

7 Q. Okay.

8 MR. SCHILLER: Let me ask you to put up 191C which
9 we've looked at before.

10 Q. That's the balance sheet of September 12th that they
11 provided you.

12 A. Right.

13 Q. Does that include a value for mortgages?

14 A. Yes, it does.

15 Q. And that was a category that was not included in the long
16 positions, I think you just said, right?

17 A. Correct.

18 Q. So if you exclude the mortgages from this September 12th
19 balance sheet that was given to you by Lehman, does it show
20 that the total value of the assets on that balance sheet --
21 could you give me that number, please? What is the total
22 value?

23 A. So, what, the sixty-five billion minus the six and a half?

24 Q. Yeah.

25 A. So it would be about 58.5.

1 Q. And if you add to that the ten billion of the
2 collateralized short term agreements, does that show a value
3 greater or less than seventy billion?

4 A. That leaves 58.5 plus ten is 68.5 which is less than
5 seventy.

6 Q. So did the balance sheet of September 12th marks that was
7 given to you by Lehman in the negotiations show you that the
8 Lehman marks on the long positions were greater than seventy
9 billion dollars?

10 A. I don't think so. It seems to be about -- in keeping --

11 Q. At any time, did you come to learn, in writing or in any
12 communication, that the Lehman marks on the September 12th
13 balance sheet listed in the APA's definition of long positions
14 were greater than seventy billion dollars?

15 A. I really don't think so 'cause this was about the largest
16 number. The sixty-five billion dollar number which included
17 the mortgages which would only be 58.5 was about the largest
18 number we saw 'cause during the week the balance sheet was
19 shrinking not growing.

20 Q. Did you learn through a writing or any communication that
21 the Lehman marks as of September 15th or September 16th on the
22 assets listed in the APA's definition of long positions were
23 greater than seventy billion?

24 A. I certainly didn't see the number. But I would be very
25 surprised if it was.

1 Q. Now you mentioned that your valuation on the APA was
2 superseded by what happened later in the week.

3 A. Right.

4 Q. Would you tell Judge Peck what you're referring to?

5 A. Well, so, on the Monday night, we were looking at this
6 balance sheet in an attempt to -- the previous week, we'd been
7 looking at the subset of the overall Lehman overall asset pool.
8 Monday we were looking at the LBI assets on the accounting
9 balance sheet. Then we started the process of trying to
10 understand how many of the positions had been closed out or
11 what assets they may actually have. But then on the
12 Wednesday -- and I don't think I was particularly told when I
13 started looking at the thing on the Wednesday that what we had
14 been looking at on Monday was now redundant. But I quickly
15 learned it was. I was asked to look at the repo collateral
16 that was being held at the Fed. And would we -- and there, the
17 first question I was asked -- was told was that Barclays was
18 being asked to step into the Fed's shoes to lend against this
19 asset pool at approximately forty-five billion dollars. And
20 did I look at the collateral.

21 Q. By that time, Wednesday, September 17th, when the Fed
22 question came up, had it become clear to Barclays that Lehman
23 was not able to deliver all the trading assets in the APA?

24 A. You know, I never really thought about it in those terms
25 because it's -- you know, the category -- as I look at it

1 today, there are -- indeed, there are categories of assets. So
2 some of those categories would still have existed. But I doubt
3 there was seventy billion dollars at that point assuming some
4 of the liabilities -- as a practical matter, assuming some of
5 the liabilities were diminishing as well. So I --

6 Q. Let me ask you -- I'm sorry. Let me ask you to turn to
7 tab 10 in your book. This is an e-mail from Patrick Clackson
8 who's testified before His Honor to Rich Ricci who's testified
9 in this trial transmitting an e-mail from John Mahon. Would
10 you identify Mr. Mahon for the Court, please?

11 A. Yeah. John ran a counterparty risk unit for the global
12 head of fixed income.

13 Q. And you're copied on this.

14 A. Right.

15 Q. And this is dated September 17th. You see that?

16 A. Yes.

17 Q. And it says in the third paragraph, "The assets we saw and
18 said we were going to buy may have been lent out. And
19 liabilities we saw have been covered by borrowing those
20 securities." Do you see that?

21 A. Yeah.

22 Q. So there was here identified for you and others a
23 potential problem that the assets in the APA may not be
24 available for delivery.

25 A. Right.

1 Q. And they then -- he then details some of the reasons for
2 this. I don't want to take the Court's time up with reading
3 each of those. But in the last highlighted paragraph, it
4 says -- well, I would ask you to highlight it -- "This will
5 make our ability to cleanly buy the assets and liabilities very
6 difficult."

7 A. Right.

8 Q. Now do you recall whether Barclays was told by the end of
9 the week that Lehman was unable to deliver the assets it had
10 promised to deliver under the APA?

11 A. I don't know.

12 Q. Did the New York Fed ask Barclays to advance forty-five
13 billion dollars in cash to replace its lending position to
14 Lehman?

15 A. Yes. I believe so, yes.

16 Q. I'm sorry?

17 A. Yes.

18 Q. And you were asked, you said, to review the assets that
19 had been pledged to the New York Fed on Wednesday?

20 A. Yes.

21 Q. And did you have a list to review?

22 A. Yes. I had another list to review.

23 Q. And how much time did you have to review it?

24 A. I think about an hour.

25 Q. Do you recall whether those securities had marks over

1 forty-nine billion dollars?

2 A. I remember it being about forty-nine to fifty billion
3 dollars, that's right.

4 Q. Did you form a view as to whether you could sell the
5 collateral for that amount?

6 A. In the -- well, in the hour to two hours that we had, the
7 specific question that I was asked was if we lend forty-five
8 billion dollars against this collateral, do you think we've got
9 enough collateral, Stephen. And after as much humming and
10 hawing as I could get away with, I did say I think we're okay
11 but that it's close because many of the assets that were in
12 that -- we weren't completely blind. It wasn't -- after all,
13 from the previous week to the beginning of this week to the
14 repo facilities, there was overlap between the asset types,
15 particularly the illiquid ones. So we didn't have to start
16 from scratch. Therefore, we already knew that it included some
17 of the assets that earlier in the week I had said that I would
18 value at three billion dollars or so less than Lehman were --
19 were valuing them. And they would have been in the repo
20 facility or ones like them.

21 Q. Did you have concerns that you wouldn't be able to cover
22 the forty-five billion dollar loan that afternoon?

23 A. Well, yeah, that was -- so the two things to say were --
24 that I had to answer was do you think we're okay to lend forty-
25 five billion dollars. And what sort of risk do we have? And I

1 had to say it is the case that if we're forced to liquidate
2 this collateral then there's going to be -- there would be a
3 substantial shortfall. If we can do it in a controlled way
4 over a period of time then we should be okay. But we're
5 dealing with a huge amount of uncertainty.

6 Q. Did your team work through the CUSIPs in the Fed portfolio
7 list over the next few hours or half a day to come up with a
8 crude or rough estimate?

9 A. They worked continually through the night over the next
10 two days to attempt to do so, yes.

11 Q. Did they come up with a rough estimate of what was in that
12 portfolio --

13 A. Yes.

14 Q. -- the Fed portfolio?

15 A. Yes. I seem to remember so.

16 Q. Let me ask you to turn to tab 29 in your book, Movants'
17 Exhibit 45. This is a e-mail to Patrick Clackson from Rich
18 Ricci on the 19th of September transmitting an e-mail from
19 Jasen Yang on which you're copied.

20 A. Correct.

21 Q. See that?

22 A. Yes.

23 Q. And the attachment is a reference to portfolio size
24 values.

25 A. Right.

1 Q. Can you describe that to the Court what Jasen and your
2 team generated here in the hours after it received that list?

3 A. Yes. This was -- this is one of many such things that we
4 would have had about the time to attempt to sort of triangulate
5 some kind of value for this portfolio. You can see that we
6 have further subdivided the categories of securities to be a
7 little bit more granular than were shown on the original
8 balance sheet. This is a first attempt to being able to then
9 put some estimate of how much of a -- what value we would
10 attribute to each of those categories by reference to how much
11 Lehman column C of the balance sheet --

12 Q. You're referring back, just for the Court's understanding,
13 to the September 12th balance sheet?

14 A. Right. So the Lehman categories are not granular enough
15 really for you to be able to do the -- that's an even cruder
16 version of this. They've only got five categories. Now we're
17 up to twenty categories. Ultimately, we'd end up line item by
18 line item. You can see therefore that there is some estimates
19 that I worked on with Jasen of what sort of reduction that we
20 would have expected to crystallize or lose if we were to
21 undertake the sort of controlled process that we -- controlled
22 risk management process that we --

23 Q. You're talking about selling, the controlled process of
24 selling to willing buyers, is that right?

25 A. Yeah. As I said, mostly selling, some holding and hoping

1 they mature.

2 Q. Now, this morning assessment, early morning assessment on
3 the 19th of the September, this was the Fed portfolio. This
4 was not what you received in the replacement repo, was it,
5 ultimately?

6 A. Well, it was not -- it was not -- I mean, although it -- I
7 think it's dat -- what date is it dated? The 19th. It was not
8 what we received. I mean, some of it was but not all of it
9 was.

10 Q. And was this a subjective assessment in terms of its
11 timing and how it was put together?

12 A. Well, as I described earlier, it -- we were trying to be
13 as objective as possible but it necessarily had some
14 subjectivity.

15 Q. Was this based on a fire sale or an orderly sale?

16 A. It was based on -- it was not a fire sale. It was based
17 on as orderly runoff as one can contemplate in the months
18 following the bankruptcy. I mean, it wasn't very orderly --

19 Q. And by runoff, are you talking about selling securities --

20 A. To reduce.

21 Q. -- in that kind of market?

22 A. Yeah, to reduce. I mean, ultimately, it was not -- it was
23 not the objective of the firm to be the long term holder of
24 50.6 billion dollars of assets as it wasn't Lehman's. And
25 Lehman had another half of the trade with this, right? It had

1 short positions. These were inventory. And this is one half.

2 So ultimately, this portfolio would have to be run off.

3 Q. By run off, you mean sold over time?

4 A. Sold over time, sorry, yes.

5 Q. In your experience with Barclays, was it in Barclays'
6 economic interest to do this repo in the absence of the Lehman
7 sale?

8 A. I would have been stunned if they had.

9 Q. I'm sorry?

10 A. I would have been stunned if Barclays had done that.

11 Q. Why?

12 A. I don't think there was ec -- there was no economic
13 benefit in doing so. If it was just the repo -- I can't
14 remember what the rate was that we would have been earning on
15 the repo. But I doubt it was anywhere near enough to
16 compensate us for the risk that we would have been taking. I
17 mean, after all, under normal circumstances, you're facing a
18 solvent counterparty that is able to continually post
19 additional margin to support its liabilities. This effectively
20 would have been a limited recourse term loan. So it would have
21 been just impractical to have done it. Its capital
22 consumption, the risk reward -- I can't imagine that it would
23 have been done in the absence of a strategic acquisition. But
24 I wasn't actually part of those discussions. But I certainly
25 wouldn't have recommended that.

1 Q. Did you have a view whether there was significant risk to
2 Barclays from the repo collateral that it received?

3 A. Well, the assessment that we were trying to make -- I
4 mean, we were sort of navigating a narrow channel between not
5 taking too much risk and risking our own institution and trying
6 to get a transaction done. So I think it was a risky
7 investment but my advice to the firm was I think that we have
8 enough collateral to support the loan and that we can risk
9 manage the position but it is tight.

10 Q. Were there then operational problems in the delivery of
11 the collateral after the repo had been agreed?

12 A. Yeah. I mean, again, this was a period of learning for
13 all. I don't think we had quite realized that during the night
14 as the securities were passed from the Fed box to Barclays' box
15 that they would -- there was a potential for them to actually
16 be delivered to somebody else and thereby the collateral would
17 -- the collateral that was available to support this loan that
18 we were going to make would be cannibalized.

19 Q. Was it? Was what you received on Thursday, the 18th of
20 September, different than what you had looked at Wednesday
21 night that was on that list we just looked at? Did you receive
22 collateral that was not in the Fed collateral?

23 A. Well, we received about thirty billion dollars or so of
24 the -- I'm using extremely loose rough numbers from
25 recollection. But about thirty billion dollars of the

1 collateral that we had looked at on the Wednesday and the
2 Thursday. And as I think everybody knows we received some cash
3 in lieu of a shortfall in the cumulative amount of securities.
4 And we received something like about ten billion dollars of
5 securities which we hadn't seen before.

6 Q. The shortfall you're referring to is a seven billion
7 dollar shortfall?

8 A. The seven billion dollars that was collateralized --

9 Q. What is the ten billion dollar securities? Could you
10 speak up and explain this to Judge Peck?

11 A. Sure. So on the -- the way the process works is that we
12 were supposed to receive -- operations receives a list of the
13 securities that it's expecting to receive in advance of the
14 repo. And it uses that as a list of what it's expecting to
15 arrive. And it goes down and it electronically puts a tick by
16 each of them and says I've got that, now I'll lend some money.
17 And I think that at the time we were planning on lending the
18 money into the evening in units of something like five or seven
19 billion dollars. And so they'd check that they had collateral
20 and then they'd lend some money. But what became evident at
21 some point, I know they kept the clearing system open late into
22 the night to permit this to occur. But at some point it did
23 close.

24 What became clear was that some of the securities that
25 were on the list that Barclays was looking at expecting to

1 receive could not be delivered. But -- so then there was a
2 decision to be made of well, do we proceed. Now I wasn't part
3 of all of that discussion but I do know what the outcome was of
4 do we proceed or not. And the decision was to proceed. And
5 therefore the loan had to be collateralized with something. So
6 about thirty billion dollars or so of the fifty billion dollars
7 of securities that we had seen the day prior, that were on the
8 delivery schedule, were delivered. Then about ten billion
9 dollars or so of securities, ten to thirteen billion dollars of
10 securities that we hadn't seen before were delivered as
11 collateral. And seven billion dollars of cash. And then that
12 collateralized the forty-five billion dollar loan.

13 Q. When you said thirty billion of the fifty billion, what do
14 you mean by the fifty billion?

15 A. Sorry. I'm approximating the forty-nine point so billion
16 that we had analyzed on the day prior.

17 Q. And I think you told the Court your analysis was it was
18 less than that--

19 A. Yes. I'm using --

20 Q. -- towards what you realized --

21 A. I'm using the custodial marks for that purpose.

22 Q. I want to return to your point that there was ten billion
23 of securities that was received in this fashion that you've
24 described --

25 A. Right.

1 Q. -- that wasn't what you had studied Wednesday --

2 A. Correct.

3 Q. -- and talked to management about. What was different
4 about it and what was different about its value if anything?

5 A. Well, the biggest problem, of course, the first -- on the
6 following morning, the biggest problem was that now we have --
7 the firm had lent money. So therefore it wasn't just a
8 hypothetical discussion. It was for we are now at risk. In
9 moving markets, we have thirty billion dollars of stuff that we
10 thought that we were going to get that we were planning to risk
11 manage in certain ways. And we have ten to fifteen billion
12 dollars -- ten to thirteen billion dollars of stuff that we
13 haven't seen before. And in the morning, we didn't even know
14 what it was. So we had no idea. It could have been just --
15 theoretically, I suppose, it could have been worthless. I
16 mean, it was an incredible thing to wake up and find.

17 Q. Well, let me ask you this. Do you recall whether of the
18 ten billion there were corporate equities in there that you had
19 not seen before?

20 A. Yeah. There was -- well, I remember we were anticipating
21 taking delivery of something like a half a billion to one
22 billion dollars of corporate equities in the portfolio that we
23 looked at the day before.

24 Q. The Fed portfolio.

25 A. In the Fed portfolio. But when we actually looked the

1 following day, we had something like eight billion dollars of
2 corporate equities.

3 Q. Did that change the risk to Barclays?

4 A. Yeah. Well, the extra stuff that we had been delivered
5 was a mixture of illiquid securities, of the mortgage-backed
6 type securities, some other stuff, and then this very
7 substantial equities portfolio. Now we hadn't really
8 contemplated the idea that we would be -- I mean, eight billion
9 dollars of equities, individual equities, not index, is an
10 enormous number of equities.

11 Q. Why was that a problem that day in that market if it was?

12 A. Well, it was a very significant challenge because we had
13 to then contemplate -- we couldn't actually -- at that point,
14 we couldn't liquidate the repo and access the individual line
15 items. We didn't even know what all of the individual line
16 items were or how to hedge them. So we now had a very
17 significant long equity position in a market that was
18 experiencing a very significant bankruptcy and total
19 dislocation of capital markets. So it was perfectly feasible
20 that, as we were experiencing, equity markets could fall ten,
21 twenty plus percent. And that would mean that we'd lose one to
22 two billion dollars in a heartbeat. And when we realized that,
23 that was pretty significant. And so we -- but from my point of
24 view, I didn't really know exactly what the terms of the
25 discussion that were being had by the negotiators was so do I

1 hedge or don't I hedge. Do I get this collateral or am I
2 giving this collateral back? So you had the additional
3 uncertainty of do I have this risk or not even once I'd found
4 out what I got which was a remarkable thing.

5 Q. After you'd found what you got, apart from this equities
6 piece that you described, did you attempt to assess its fair
7 market value, what you could realize for it on sale?

8 A. Yes. We just did exactly the same process again that we'd
9 done in the days leading up to that.

10 Q. And was there a significant amount of it which was quite
11 difficult to value because of its illiquidity?

12 A. Well, as I say, it was -- I can't remember the exact
13 numbers, to be honest with you, of the ten billion -- the ten
14 to thirteen billion dollars of custodial marks, how much that
15 was made up of illiquid assets. It was that there was a --
16 there was some more. So it was the same -- it was exactly the
17 same processes as previously.

18 Q. And was it subjective?

19 A. Yes, it would have been -- well, again, as objective as we
20 could be but it had to be that we were now looking at some
21 things that we had to make some assumptions about.

22 Q. Did you have to put prices on securities for which there
23 were no bids in the market?

24 A. Yeah. There were securities -- yeah. I mean, there were
25 securities in that portfolio, one in particular, that was a

1 single billion dollar -- 500 million dollar to one billion
2 dollar -- you know, one billion dollar. I use one billion
3 dollar. That was its face amount. One billion dollar security
4 that had never traded, that was not intended to trade. There
5 were several very substantial positions that were really not
6 intended to trade in any of the forms that they were. There
7 were significant portfolio of, I recall, auctioned rates
8 securities, failed auctioned rate securities. These are
9 securities that should remarket themselves on a continual
10 basis. But the -- they were not capable of being remarketed.
11 So now they were being valued as effectively distressed long
12 dated securities. So there really was no market for something
13 like that. It was a very significant U.S. municipality bond
14 portfolio. That was -- market was very distressed and closed.

15 Q. Let me ask you to turn to tab 14 in your book.

16 MR. SCHILLER: BCI Exhibit 290, Your Honor.

17 Q. This is again -- this is dated Monday, September 22nd, the
18 day of closing.

19 THE COURT: Mr. Schiller, let me just ask you this.

20 MR. SCHILLER: Yes.

21 THE COURT: I don't know how much longer you're going
22 to be on direct and I'm wondering at what point it might be
23 convenient for us to take a break. If you think you're going
24 to be just a brief additional period, I'll take a break before
25 cross.

1 MR. SCHILLER: I think we should take a brief break
2 now. Probably at about ten or fifteen minutes.

3 THE COURT: All right. Let's take a break until
4 11:20.

5 MR. SCHILLER: Thank you.

6 THE COURT: Okay.

7 (Recess from 11:08 a.m. until 11:24 a.m.)

8 THE COURT: Be seated, please.

9 MR. SCHILLER: Thank you, Your Honor. May I ask the
10 witness and Your Honor to turn to tab 13? I went to the wrong
11 tab. I'm glad we stopped when we did.

12 RESUME DIRECT EXAMINATION

13 BY MR. SCHILLER:

14 Q. I was asking you at the break about what you actually
15 received in the repo and the valuation process. Do you recall
16 that generally?

17 A. Yes.

18 Q. This e-mail from Mr. Tonucci -- would you identify him for
19 the Court, please, if you recall his title?

20 A. Do you know, I can't remember -- he was in the -- he was
21 head of one of the finance departments at Lehman.

22 Q. I can't hear you.

23 A. Sorry, can you hear me now? He was head of one of the
24 finance departments at Lehman; I can't remember his exact
25 title.

1 Q. Okay. So Lehman is sending you early on Friday, the day
2 of the sale hearing, "Collateral and Inventory Held by LBI", do
3 you see that subject?

4 A. Yes.

5 Q. And it says, "Stephen" -- in the first paragraph -- "as we
6 discussed, the attached files show collateral that LBI owns and
7 that has been reversed in. This is collateral that would be
8 transferred to Barclays for financing and would form the
9 majority of the assets that would be purchased." So as of 1 in
10 the morning on Friday you did not know what you were actually
11 receiving in the replacement repo, is that right?

12 A. That's correct.

13 Q. Now, let me ask you to turn to tab 12, the preceding tab,
14 please. And that is Exhibit -- BCI Exhibit 895. And this is
15 another e-mail from Mr. Tonucci later in the day at 1 o'clock
16 in the afternoon the day of the sale hearing. And he's
17 transmitting now to Jasen Yang "BarCap Collateral", meaning the
18 collateral in the repo replacement, is that right?

19 A. Yes.

20 Q. And you see the -- if you turn to the second page there's
21 a forty-nine billion dollar number there?

22 A. Right.

23 Q. If you turn back, he says to you, "This is using our
24 prices", referring to Lehman marks, is that right?

25 A. Right.

1 Q. "Shows less than BoNY file so we may be conservative."

2 Now BoNY was a custodian, right?

3 A. Right.

4 Q. And did they mark the Lehman securities as they came in to
5 the Barclays accounts for the replacement repo?

6 A. Yes.

7 Q. And what Lehman was telling you was those BoNY marks were
8 higher than theirs?

9 A. Yes.

10 Q. Now, your effort, then, to value this repo, was it a
11 difficult process that day?

12 A. Yes, because in many respects it was the same process as
13 the processes that we had been before. So we just started
14 again --

15 Q. Except that you'd advanced forty-five billion dollars at
16 the time.

17 A. Except that -- as I say, in many respects it was the same
18 process because we just started again refining the analysis of
19 the securities that we'd already started work on and started
20 work on the securities that we'd not seen before. The
21 additional challenge was that now we were really on risk, and
22 so now all of a sudden the risk assessment that we'd made the
23 day prior was no longer valid. And that was -- that was an
24 additional concern because that, in many respects, was -- if
25 you think, you know, we're making an expectation of what we

1 think is going to be the realized state of the world of how
2 much we think we're going to be able to monetize from this
3 portfolio, but around that we have to give some confidence to
4 management that how likely is that or how much downside risk is
5 there. Well, in the absence of knowing the collateral, neither
6 can I form the expectation nor can I give a measure of
7 confidence.

8 Q. Did you have any certainty Friday evening, September 19th,
9 whether the repo collateral was worth enough to cover the
10 forty-five billion dollar loan?

11 A. No. No, I think we'd started to make -- you know, we
12 were -- you know, senior management definitely wanted first
13 count estimates from as early on in the day and throughout the
14 course of the day. There was no shortage of time till the
15 phone rang to say: Well, what's it worth, Stephen, and how much
16 risk do we have? But --

17 Q. Early in the day when that --

18 A. During the --

19 Q. -- process started --

20 A. Just during the course of the day and into the evening,
21 but it was -- you know, it was, you know, never really the case
22 that you could say you knew with certainty that there was
23 enough until many -- you know, even many months later I'm not
24 sure that that was the case.

25 Q. During the day of September 19th, did you discuss with

1 negotiators such as Rich Ricci or Patrick Clackson or Archie
2 Cox concerns that this collateral that was coming in may not be
3 worth forty-five billion dollars?

4 Q. Yes, because early on in the day we had -- I can't
5 remember to which of those individuals, but certainly there
6 were ongoing conversations with each of them over the course of
7 this period. And I would have said in the morning, you know,
8 we don't even know what we've got yet, guys, so I can't tell
9 you that you're collateralized. And during the course of the
10 day we'd have been able to start to load up the lists of
11 securities, itemize them and do the process and start to say,
12 well, we have the following. But we knew that there were
13 problems with the Fed marks and there was no real selection
14 process going on, so we didn't know what collateral we'd taken
15 delivery of. So it was a very challenging thing.

16 Q. When you say "the Fed marks", are you referring to the
17 custodial --

18 A. Sorry, the custodial --

19 Q. -- marks by BoNY, just so the Court understands?

20 A. Yes, yes.

21 Q. And were there some JPMorgan custodial marks as well?

22 A. Yes, yes.

23 Q. Did you have concerns on Friday that you shared with your
24 negotiators that the BoNY marks were unrealistic?

25 A. Well, the BoNY marks -- I don't remember particularly

1 whether we focused on the BoNY marks that day or the JP marks
2 the day before, because after all JP was the custodian for the
3 Fed facility the day before so they'd been providing the daily
4 marks, and then that responsibility was switching to BoNY as
5 our custodian. But what we would have been saying is -- so it
6 had already come to light in the days prior that there were
7 many instruments which were extremely difficult to value even
8 for a professional who was -- or a team of people who were
9 trading the securities, let alone a custodian. I mean, the
10 custodian has the responsibility for attempting to do it but it
11 would have been a challenge to them. Hence, why -- you know,
12 but they are, after all, providing marks to a lender who is
13 then haircutting that mark significantly to work out how much
14 they're willing to lend at. So they had an additional buffer.

15 Q. Did you rely on the BoNY marks in assessing the values?

16 A. Rely is too strong a word. I had to use them because --
17 in some way in the analysis because at a certain point in time
18 it was the only information that we had available to us. So
19 for some of the very preliminary estimates at least we'd be
20 able to say, well, we have forty-nine billion dollars or fifty
21 billion dollars of collateral according to the custodial marks,
22 though that was all we would have had and we knew that it was
23 very likely that our assessment of what was an appropriate
24 realizable value was likely to be significantly less than the
25 BoNY marks.

1 Q. Did you received equity-linked notes issued by Lehman that
2 were marked by BoNY?

3 A. Yes.

4 Q. Were those marks reliable?

5 A. No, they -- I seem to remember they were 200 -- they
6 were -- it was an interes -- a classic example of something
7 that was listed as -- there was a CUSIP, there was a -- we
8 didn't -- I don't even know whether we realized this on the
9 Friday, actually, it may have been sometime later that we had
10 the CUSIP. And then next to the CUSIP it would say what the
11 instrument was. And it was say, for example, IBM Equity, but
12 it was actually a warrant and I think it said warrant. But
13 what wasn't clear to us, of course, was that the counterparty
14 to the warrant actually was Lehman. So really there was no --
15 they were facing a bankrupt entity so there really was no
16 value. And I seem to remember that we had attributed about 270
17 million dollars of value to those, but that is just from
18 recollection.

19 Q. Were there CDOs among the assets you receive?

20 A. Yeah. There were a number of CDOs and CLOs, yes. And
21 those are challenging instruments (a) because there were very
22 few participants in the CDO market; two, they're a very levered
23 instrument, meaning that they have struc -- they are -- they
24 have structural leverage embedded in the security. You know,
25 there's collateral and then there are loans on the collateral

1 and loans on the loans, so it's a very levered instrument. And
2 then, three, there are derivative counterparties within those
3 securities, including Lehman. So exactly what the behavior of
4 the security would be would be uncertain. And we had some
5 familiarity with that because in the portfolio that we'd also
6 been managing for Barclays there were CDOs as well, so we knew
7 some of the issues.

8 Q. By closing on Monday, did you have a high degree of
9 confidence in the value of the replacement repo assets?

10 A. No, I had a better -- a better confidence than I had on
11 Friday morning and Saturday morning and each day, you know, we
12 chipped away at it and we built confidence of what we
13 thought -- what we thought we'd ended up owning and what it was
14 and how we were going to manage it. After all, there's an
15 element that they're not totally -- it's not totally possible
16 to separate the valuation from the risk management decisions
17 because a very illiquid asset, for example, can have absolutely
18 no hedging or immediate actions that can be taken on it, so
19 really the only outlet is either to hold it to maturity or to
20 seek to dispose of it.

21 Q. Now, were these subjective judgments you were making on
22 Friday?

23 A. Yes, yeah.

24 Q. And would you tell the Court about the back and forth? I
25 believe you said a few minutes ago that your management was

1 calling you through the day asking you about this process of
2 trying to determine value.

3 A. I don't remember the specifics of it because, in many
4 respects, that entire period was -- you know, from the
5 beginning of that week into the next week was one long day. So
6 I don't remember the specific conversations during the course
7 of the day but I know that, you know, my early assertion would
8 have been that we've taken delivery of assets, we don't know
9 what all of them are, and then during the course of the day
10 we'd have started to refine that.

11 Q. What I was referring to was your testimony to His Honor
12 that people were calling you and saying Stephen, what do you
13 got?

14 A. Yeah.

15 Q. How does it look?

16 A. Yeah.

17 Q. Words to that effect.

18 A. Yeah.

19 Q. Are you -- who were those calls coming from, if you
20 remember? Were they the 19th, the day of the sale hearing?

21 A. That's the 19th -- that's the Friday, right?

22 Q. Yes, Friday.

23 A. Yeah. That would have been that day and it would have
24 come from -- I mean, the people that I definitely would have
25 spoken to that day would have been Mike Keegan, Patrick

1 Clackson, and I can't remember whether I spoke to Rich Ricci or
2 Archie on those days, but those were the people that would have
3 been calling me and saying what have you got? And there may --
4 well, calling or e-mails, there may be traffic as well.

5 Q. Let me ask you one more question on this about valuing
6 what you've got.

7 A. Um-hmm.

8 Q. Did you receive large positions in certain securities?

9 A. Yes, we received some very significant positions, and I
10 can't remember all of the ones that were -- I think this one
11 was in the repo collateral not in the clearing box. But there
12 was -- well there were several. There was the very significant
13 Pine CLO which had a face -- I think we estimated market value
14 at about 500 million dollars face value of about -- face
15 meaning its contractual liability of about a billion dollars.
16 That was a single, private label security really designed for
17 financing purposes for Lehman so that had never been traded.
18 That was a good example of a complete private label liquid --
19 illiquid security. At the other extreme we owned common stock
20 which was traded on an exchange for a company called Apco which
21 is an Argentinean petroleum company. And I think we owned all
22 of the ten percent of the float of that security that was not
23 owned by a single other party. So the amount of that security
24 that was going to trade each day was thousands of dollars --
25 tens of thousands of dollars, and we owned fifty million

1 dollars. So that sort of highlights something that you could
2 type it into Bloomberg and you could get up a mark and you
3 could see, oh, I own Apco, but I didn't really do much for you.
4 And selling S&P futures against it wasn't going to hedge it.

5 Q. When you describe a security in which you own a great many
6 positions or shares, whatever the appropriate word is, have you
7 heard that referred to as a block or bulk position in a
8 security?

9 A. I've heard -- I've certainly heard of the word block being
10 used over time, but I don't know --

11 Q. How do you value a block position? How did you value a
12 block position in your repo assessment, or even earlier in the
13 week, because I would like you to explain to the Court how that
14 figured into your valuation of different securities.

15 A. Right. I mean, and this again was an example of something
16 that changed over the course of the coming months not weeks.
17 We were still liquidating that equity portfolio in January,
18 maybe even February of 2009. It sort of shows how long it
19 takes to sensibly dispose of a position like that. After all,
20 we weren't, you know, intending to hold onto the positions
21 permanently. So the -- what we had done, first of all, at a
22 very high level, was attempt to say given the number of -- I do
23 this with my traders that work for me today when they're
24 trading our own book. We have exactly the same approach which
25 is, you know, how many day's volume, how long is it going to

1 take you to liquidate this position, because that's an
2 assessment of the number of willing buyers, if you want to call
3 it that, or the liquidity of the instrument.

4 Q. And when you say "liquidate", you mean sell?

5 A. Sell, sorry, sell, you know, into a market. And in many
6 respects you know that every time you sell something,
7 particularly in a falling market but not just in a falling
8 market, particularly in a falling market, every time you sell
9 you've eliminated the best bid. So the next time you sell
10 you're going to a lower bid and the next time a lower bid and
11 the next time a lower bid. So almost by construction, if you
12 dispose of something into a market where there aren't lots of
13 new participants coming into the market to replace the bids
14 that you hit the price will decline. And we were attempting to
15 reflect that in the price that we were willing to pay. And you
16 know, that was more on the liquid side. On the illiquid the
17 same holds but it's an order of magnitude more complex because
18 almost nothing ever trades at the instrument you're on.

19 Q. So this was a process by which you were valuing the assets
20 to determine a price at which you would sell them over this
21 process?

22 A. Yes, I mean, effectively what I was attempting to do was
23 to work out what I thought over a period of time, using the
24 techniques that we'd used in other similar situations, how much
25 I could realize through the sale or restructuring or just

1 waiting for the cash --

2 Q. Okay.

3 A. -- certainly with sale, and therefore how much would that
4 be worth today.

5 Q. You use the words "price willing to pay". You didn't pay
6 a price per asset, your consideration for this transaction was
7 not price per asset, was it?

8 A. It wasn't price per asset, no. I mean, I'm just saying
9 the logic that I had followed in providing my negotiators an
10 estimate of the value that we ought to attribute to the various
11 portfolios that we had analyzed over time and the risk
12 associated with them.

13 Q. Let me turn to the subject of exchange-traded derivatives
14 briefly. Did you try, Mr. King, with your team to value
15 Lehman's exchange-traded derivative positions the week of
16 September 15th?

17 A. Value -- value's probably not necessarily the right word.
18 What we were trying to do was to assess -- the first thing that
19 we realized when we thought about the exchange-traded
20 derivatives position, which we hadn't really -- my team hadn't
21 really thought about much and through the course of the week
22 was that we don't know what the risk is. We know we have this
23 line item that says "exchange-traded derivatives" but what is
24 that. I mean, these are --

25 Q. You didn't know the positions themselves.

1 A. We didn't know the positions themselves. We didn't know
2 whether we were long or whether we were short. Because after
3 all when -- it's a bit like the reason why the long asset
4 position exists, you know, it wasn't just a long asset
5 position, there was a liability position as well; we were just
6 taking the asset position.

7 The same is kind of true with the exchange-traded
8 derivatives that there are -- that Lehman had a book of
9 exchange-traded derivatives and OTC derivatives,
10 over-the-counter derivatives. And their risk was the amalgam
11 of the two. We were just taking the -- necessarily, the
12 exchange-traded derivatives position. So Lehman could not
13 readily tell us what their risk was of just their exchange-
14 traded derivatives position.

15 Barclays systems weren't actually robust enough to be able
16 to load up all of the positions because we -- you know one of
17 the reasons for acquiring the business was because it had an
18 equities business. We didn't have an equities business in the
19 same scale so we couldn't even load up the exchange-traded
20 derivatives position. So we were relying on some extremely
21 crude estimates of the risk.

22 I was much more focused on what's the risk not the value,
23 because ultimately if -- I didn't know whether we could be ten
24 billion dollars long and I'd just woken up in the morning to
25 find out I was -- we, the firm, I say I, I mean the firm

1 obviously -- was eight billion dollars long equities, but for
2 all I knew the exchange-traded derivatives position could be
3 long ten billion dollars of equities and Barclays had just
4 taken on responsibility for it. So I had no idea. And so our
5 first estimate was to try and whittle that down and understand
6 what that risk was. And as I say, Lehman couldn't provide it
7 to us because they couldn't isolate the exchange-traded
8 derivatives from the OTC positions and we couldn't run the
9 positions so we went to the clearing houses to try to estimate
10 the change in margin as a way of approximating what the risk
11 was.

12 Q. And the exchange-traded derivatives are offset, to some
13 degree, by the exchange-traded derivative margins --

14 A. Well --

15 Q. -- is that right?

16 A. -- yeah, well, necessarily there's margin associated with
17 the exchange-traded derivatives position. That was the first
18 thing that we looked at was -- you know, this highlights how
19 rudimentary the analysis had to be. If the amount of margin in
20 the account is going down, the excess margin is going down and
21 the market just went down, then presumably we're long. That
22 was about all we could manage.

23 Q. By September 22nd, which was the closing, were you able to
24 determine whether Barclays would have a profit or loss from
25 taking on LBI's exchange-traded derivatives business?

1 A. On the Monday?

2 Q. Yes.

3 A. No.

4 Q. What was the quality -- we may have just covered this, but
5 how long did it take you to determine those positions and the
6 value of those positions?

7 A. I can't --

8 Q. Generally.

9 A. I can't remember the exact timeline, but it took -- we
10 managed to start to make estimates using the techniques that I
11 just described, you know, over the course of that weekend. And
12 I know that at least we had whittled it down to sort of between
13 two billion dollars short, I think, or four billion dollars
14 long. And I think going into the -- these are very approximate
15 numbers, by the way, but that we had -- I think early in the
16 week, maybe even by Monday morning, we'd started to assume that
17 we were three billion dollars long, which isn't a value of an
18 asset. That just describes the amount of -- approximately of
19 the S&P the risk would behave like. So if the market went down
20 ten percent we'd lose 300 million dollars.

21 Q. Let me ask you to turn to tab 14 in your book.

22 MR. SCHILLER: BCI Exhibit 290, Your Honor, which is
23 in evidence.

24 Q. This is an e-mail from you on Monday to Liz James and
25 others.

1 A. Right.

2 Q. Monday, September 22nd, do you see that?

3 A. Yes.

4 Q. And you're writing her and you're saying "It is clear that
5 one billion has absolutely no idea" -- "that Lehman Brothers
6 has absolutely no idea what its OCC risk position is".

7 A. Right.

8 Q. Was that your understanding as of September 22nd?

9 A. Yes.

10 Q. "We know it is between two billion short and four billion
11 long. They do not know what had been booked to what entity.

12 We cannot see." What's that a reference to?

13 A. I can't remember what that was to do -- that may have been
14 to do with where the sum of it was -- I think the oth -- there
15 were -- so I'd actually forgotten about another aspect of the
16 problem, which was it wasn't just the OTC derivatives versus
17 the exchange-traded derivatives, it was whether any of the
18 exchange-traded derivatives were really associated with, for
19 example, LBIE. So we didn't really know -- we really didn't
20 know what we had just taken on because we were only taking on
21 the exchange-traded derivatives associated with LBI.

22 Q. And you say "We're now four days into making zero progress
23 on this with them." Are you referring to Lehman?

24 A. There's --

25 Q. Or the positions?

1 A. I don't know actually. It might have been just -- Lehman
2 weren't -- Lehman were not going out of their way to be
3 unhelpful, it's just that they -- you know, their systems
4 aggregated risk in a way that had not contemplated the idea
5 that they themselves would default. So it was going to take
6 some time to cause their systems to be able to properly isolate
7 and report the risk. And after all, the transaction itself
8 hadn't been consummated at this time. So I -- you know, there
9 was a -- they were working hard but I think it was going to
10 take some time.

11 Q. After the closing were you concerned that even with the
12 margin the exchange-traded derivatives could represent a
13 significant liability to Barclays?

14 A. I wasn't part of the negotiations or discussions about the
15 purchase agreement, so I really did just try to focus on the
16 job that I had which was valuation and risk management. And
17 the risk management aspect of the derivatives that concerned me
18 was that I really had very little idea of what the complex
19 risks were that would be embedded in that book.

20 Q. Okay.

21 A. After all, it may be behaving like three billion dollars,
22 roughly, but if the market moved a lot it might behave like six
23 billion dollars, and therefore that could -- you know, one
24 would assume that under normal circumstances a counterparty is
25 required to continually post incremental margin to a clearing

1 house. Well, here there would have been a finite amount of
2 margin. So presumably, if markets moved significantly enough,
3 then the margin could be exhausted. And I didn't know what
4 that was.

5 Q. In terms of your testimony that you just made, let me ask
6 you to look at your e-mail that's at tab 16.

7 MR. SCHILLER: Your Honor, BCI Exhibit 294. So much
8 for my fifteen-minute prediction.

9 Q. And there, Mr. King, you're writing to Rich Ricci, Mike
10 Keegan, Patrick Clackson about this subject. "Rich, Mike,
11 Patrick", you say -- and in the third paragraph "The big and
12 difficult open issue remains the exchange-traded derivatives."
13 You notice the date of this is September 23rd, day after
14 closing.

15 A. Right.

16 Q. And I asked you whether you were concerned after closing
17 that this was a significant liability to Barclays. Do you
18 recall that?

19 A. Yes.

20 Q. You say "We believe we have identified all of the
21 exchanges captured in this, and primarily the exposure is via
22 the OCC."

23 A. Yeah.

24 Q. "However, the size of the risk position is still unclear
25 as is all the operational process by which these positions

1 could be closed out or transferred." So was that a significant
2 liability from your standpoint at that point in time?

3 A. Yeah, it was --

4 Q. Even with all the margin?

5 A. It was a tremend -- there was a tremendous amount of
6 uncertainty, yes.

7 Q. Do you have an understanding, based on your experience,
8 whether if there had been no sale to Barclays these exchange-
9 traded derivative accounts at the OCC and other clearing houses
10 would have had any positive value to the Lehman estate in a
11 liquidation?

12 MR. MAGUIRE: Objection, Your Honor. No foundation,
13 speculation.

14 THE COURT: I'll sustain that objection only because I
15 don't think anybody can have experience on this based upon the
16 evidence in this case so far. But you also seem to be
17 eliciting or attempting to elicit an opinion from a lay
18 witness. That may be permissible, but you do need to do more
19 to get to this point if you choose to do go there.

20 Q. Let me ask you to look at Mr. McDade's testimony before
21 His Honor on April 27th, page 39, line 3, through page 40, line
22 19, Mr. King. He's asked:

23 "Q. Can you describe some examples of where Lehman positions
24 were wiped out or closed out during the course of the week of
25 September 15th.

1 "A. I would use an example of the call that we got late in the
2 week from CME with respect to the positions that we had on that
3 exchange.

4 "Q. And what happened there?

5 "A. Despite our asking for it not to happen our positions were
6 put into an open auction process. We ultimately were taken out
7 of the positions and the margin associated with those
8 positions.

9 "Q. Let me be sure I understand what you're saying, at the
10 CME, the Chicago Mercantile Exchange, you had certain positions
11 and you had certain margin on deposit as collateral?

12 "A. That's correct.

13 "Q. And when your positions were closed out you lost your
14 margin or collateral?

15 "A. Correct."

16 And he goes on to say it was -- the loss was in excess of
17 a billion dollars or so. And were you aware of that experience
18 that week on the part of Lehman?

19 A. I was certainly aware of the exchange closing out -- the
20 exchanges closing out the -- CME closing out the commodities
21 positions.

22 Q. But did you expect that the OCC or other clearing
23 corporations would close out Lehman's exchange-traded
24 derivative positions if there were no sale to Barclays?

25 A. I don't think they would have had any choice to do

1 otherwise.

2 Q. And consistent with what Mr. McDade testified about the
3 CME, did you expect that Lehman would lose its margin or
4 collateral of the OCC or other clearing houses in the absence
5 of a sale to Barclays?

6 A. It's certainly very possible. As I just said, it's very
7 hard to say with certainty that it would have happened, but
8 it -- you know, there's a finite -- the margin, after all, is
9 supposed to be continually topped up and volatility was going
10 up and markets were going down. If the position was behaving
11 like a long position there was a finite amount of collateral
12 and therefore a finite amount of margin and therefore certainly
13 in a forced liquidation it was a very sizeable position, it
14 could easily have been exhausted.

15 Q. Are you aware of any secret agreements between Lehman and
16 Barclays during the week of September 15th through the closing
17 in connection with the sale?

18 A. No.

19 Q. Were there any secret agreements or understandings between
20 you and your team or Barclays and anyone at Lehman with regard
21 to the valuation of assets in the sale transaction that was
22 presented to His Honor, as far as you know?

23 A. Certainly not.

24 Q. After the December 2008 settlement over the seven billion
25 dollar issue, do you recall whether Barclays was asked to

1 provide information to the creditors on some of the
2 complexities of the transaction?

3 A. Yes.

4 Q. Did you participate in the effort to provide the
5 creditors' committee with information about the transaction?

6 A. I forget the exact timing, but I remember being asked to
7 attend a meeting with the creditors' committee along with a
8 number of other people from Barclays.

9 Q. Do you recall generally whether it was in February of
10 2009?

11 A. Yes, it would have been about then, yes.

12 Q. And let me ask you just to look at a sign-in sheet -- it's
13 761, tab 19 -- covering that meeting. It shows at the very
14 bottom that you attended. Do you see that?

15 A. Yes.

16 Q. And there's a reference to the meeting at our law firm,
17 BSF. And do you recall whether Brad Geer, Mr. Fazio, and Mr.
18 Burian were Houlihan Lokey committee financial advisors?

19 A. You know, I don't remember the names of the individuals
20 that were there.

21 Q. Did you understand that the committee's financial advisors
22 were participating?

23 A. Yes.

24 Q. And did you understand that the lawyers for the committee
25 were also participating?

1 A. Yes.

2 Q. Did you attempt to provide helpful information to the
3 creditors' committee concerning the valuation process that you
4 had participated in and testified about here today?

5 A. Yes, those were my instructions, yes.

6 Q. And did you attempt to explain the details of the repo
7 transaction and the valuation issues within that, do you
8 recall?

9 A. I remember that we discussed -- you know, I don't actually
10 remember all of the dialogue. I remember that we discussed
11 many issues associated with the collateral, the valuation of
12 it. I can't remember the repo transaction specifically being
13 discussed but it must have been discussed. I remember the
14 mortgage securities being discussed. That's what I remember.

15 Q. Now, you were seated on one side of the room, correct?

16 A. Yes.

17 Q. And across the room was the committee and its counsel?

18 A. Yes.

19 Q. Do you remember whether anyone from the committee's side
20 of the room asked you whether there was a 47.4 billion dollar
21 valuation cap on the transaction, from your experience?

22 A. No, I don't remember that.

23 Q. I'm sorry?

24 A. I don't remember them asking that, no.

25 Q. Did -- do you recall whether they told you, at this

1 meeting in February 2009, that they had independently valued
2 the securities on schedule A of the purchase agreement and
3 concluded that they were worth billions of dollars less than
4 the committee and the Court had been told?

5 A. No, I don't remember them stating that.

6 Q. Incidentally, would the possession of schedule A to the
7 purchase agreement provide the opportunity for the creditors'
8 committee to value them in September 2008 as you valued them in
9 that period?

10 A. They could have undertaken the same process that we had.

11 Q. Let me just ask you to look at tab 20 in your book --

12 THE COURT: -- which is BCI Exhibit 812, Your Honor.
13 It's admitted.

14 Q. And it makes reference to their saying -- and I know you
15 don't know all the individuals there but the Court does --
16 their representatives from the committee's counsel and from its
17 financial advisors. And they say, "Yes, we're looking at them,
18 schedule A appears consistent with that which we had Sunday
19 night. So the issue is they really were only worth the amount
20 that was agreed on between Lehman and Barclays or they were
21 worth more. We can price a fairly big portion of securities
22 but there are some that we don't know on schedule A. Those
23 that we've looked at seem to suggest that they're worth more
24 than implied by the negotiated mark on the deal which amount
25 isn't shown in any detail." The two sides somehow said that,

1 quote, "although the detailed schedule A amount totals to X
2 it's really worth Y in the aggregate because the marks in the
3 system are outdated which seems odd. The difference between X
4 and Y is several billion."

5 Did anyone sitting across from you on -- in February 2009
6 in my office make these comments to you or share this
7 information with you?

8 A. I don't recall it. I recall a lot of their focus was
9 really on the mortgage-backed securities and understanding, you
10 know, how many of them were there. But I don't really remember
11 them probing this, no.

12 Q. Let me ask you to turn to the next -- to tab 21 which is
13 dated Friday, October 10th, again, from Milbank committee
14 counsel to Milbank committee counsel, transferring further
15 updates from Houlihan, the committee financial advisor. And at
16 the third and fourth pages is a narrative in this memo -- in
17 this e-mail, and there's reference in the fourth page in the
18 fourth paragraph, "We're still looking at the remaining balance
19 of 14.4 billion in schedule A but it is clear that it shouldn't
20 be a 4 billion -- a 5 billion dollar haircut necessary here. A
21 five billion dollar discount would imply an average mark of
22 sixty-five percent and a lot of these securities are household
23 names." Did anyone on February of 2009 make this comment to
24 you or ask you about the subject of this paragraph?

25 A. I don't remember them doing so.

1 Q. Did anyone at that meeting suggest to you that -- or tell
2 you their view, if they had it, that Lehman executives were in
3 cahoots with Barclays in connection with the valuation?

4 A. I can't remember them making that assertion. I don't
5 think they did, no.

6 Q. After that meeting, did you and Jasen Yang and your team
7 make an effort to generate spreadsheets for the financial
8 advisors and the committee concerning the trading assets that
9 you had received?

10 A. Yes, I mean, I remember the discussion at the offices
11 being a relatively, you know, cordial one in which we provided
12 them as much information as we could in response to their
13 questions. I remember there was some follow-up that we
14 provided them. I don't remember the specifics of it.

15 Q. And after that meeting did you provide substantial data
16 for them, do you recall?

17 A. What did they --

18 Q. Concerning the trading assets that you'd received?

19 A. Yeah, I mean -- well, the start -- well, you know, the
20 interesting thing is, of course, a lot of the information is
21 just available in the annexes anyway. And I do remember that
22 they had asked for other stuff from us, but I can't remember
23 the specifics of it, of what they needed.

24 Q. Would you look at tab 22 in your book?

25 A. Sure.

1 Q. And do you see it says "Index of disc and materials
2 produced on March 20th in response to creditors' committee's
3 requests" that are dated there?

4 A. Right.

5 Q. Did you prepare this material?

6 A. My team would have prepared it.

7 MR. SCHILLER: And that is BCI Exhibit 762, Your
8 Honor.

9 Q. And if you turn to the next tab 23, you'll see a letter,
10 BCI 763, from my office, my partner transmitting these
11 materials. You see that?

12 MR. TAMBE: Objection, Your Honor. Foundation. I
13 don't think he's established that there's a correlation --

14 THE COURT: I'm sorry, I can't hear you.

15 MR. TAMBE: I'm sorry. Objection, Your Honor.
16 Foundation. I don't think Mr. Schiller's established that
17 there's a connection between these two documents.

18 THE COURT: Are you objecting to the question or
19 objecting to the use of the document?

20 MR. TAMBE: Well, objecting to the question because it
21 lacks foundation. He has not -- Mr. Schiller hasn't
22 established that there's a correlation between the documents
23 that are referenced in Exhibit 22 and the letter which purports
24 to transmit documents in Exhibit 23.

25 THE COURT: Well, I would -- there are Bates numbers

1 that are referenced in the letter. I'll reserve on the
2 objection at the moment, waiting for the question to be
3 clarified.

4 MR. SCHILLER: I'm going to withdraw that question --
5 Q. -- and just ask by reference to reading this Exhibit 763,
6 do you recall whether an offer was made on behalf of Barclays
7 to meet with the committee to explain the material referenced
8 in the letter?

9 A. After the first meeting? I -- it may well have been the
10 case, actually, I think we made ourselves available.

11 Q. Do you recall whether there was a single follow-up
12 question to you or Mike Keegan or your colleagues from the
13 committee about this data?

14 A. If there was it must have been pretty limited because, you
15 know, my team can be quite efficient sometimes at responding to
16 requests that came into from the firm, but they usually keep me
17 pretty well appraised if there's anything significant that we
18 should be responding to. After all, we're a very tight group
19 so I really don't think there was.

20 Q. After the acquisition of LBI, did Barclays' product
21 control function work to value the assets that had been
22 acquired for the purposes of the final acquisition balance
23 sheet?

24 A. Yes, they had to -- there was a -- an acquisition balance
25 sheet was going to form a part of the year-end financials for

1 Barclays so that as with a valuation of all assets in the firm
2 there needed to be an independent process around it. And that
3 took the bulk of the rest of the year. Actually, it took
4 longer than the rest of the year because we didn't complete it
5 I think until February.

6 Q. Were you involved to an extent in trying to value, as part
7 of that process, assets for which there was no information
8 available?

9 A. Yes. I mean, the process for product control is
10 independent but collaborative as well because after all they do
11 have to rely on us for information so we provided them as much
12 as we could and helped them with establishing what they felt
13 was reasonable -- reasonable marks.

14 Q. Based on the assets that you reviewed in connection with
15 the purchase of Lehman, do you recall what Barclays paid for
16 those assets and the running of the business, the
17 consideration?

18 A. I think I've come into contact with that, you know,
19 through the course of this process but I don't really -- you
20 know, I know it was over 250 million dollars or something
21 except for the entire -- entirety. There was no -- I don't
22 remember there ever being a discussion about the asset pool in
23 isolation. It was a business -- it was a business acqui --
24 well, it was the purchaser -- the purchase of the business.

25 Q. Thank you.

1 MR. SCHILLER: No further questions, Your Honor.

2 MR. TAMBE: Good morning, Your Honor. Jay Tambe for
3 Lehman Brothers Holding, Inc. We'll have some binders to hand
4 out to the witness and the Court.

5 THE COURT: Okay.

6 MR. TAMBE: May I approach, Your Honor?

7 THE COURT: Yes. Thank you.

8 (Pause)

9 MR. TAMBE: Mr. King, just to keep the binders
10 straight, I've handed you two binders with green covers. One
11 is -- one has your name on it. The other simply says "witness
12 binder".

13 THE WITNESS: Right.

14 MR. TAMBE: You have those?

15 THE WITNESS: Right.

16 CROSS-EXAMINATION

17 BY MR. TAMBE:

18 Q. Good morning, Mr. King. My name is Jay Tambe. I'm one
19 of the lawyers for Lehman Brothers Holdings, Inc. We have not
20 met before. I want to follow-up on several areas in which you
21 provided testimony and perhaps let's start with your current
22 position. You testified that you were with a fund, or hedge
23 fund, of sorts called C 12, is that right?

24 A. C 12 Capital, yes.

25 Q. And that's a management company of some type?

1 A. Yes. It's a management -- asset management company.

2 Q. And what assets does C 12 manage?

3 A. What does it manage?

4 Q. Yes.

5 A. The bulk of what C 12 manages currently are assets
6 associated with a transaction called Protium, which is a
7 mixture of mortgage backed securities and also a fund of liquid
8 securities worth about 800 million dollars.

9 Q. Roughly twelve billion or so in Protium, is that right?

10 A. That's right.

11 Q. And those are all assets that Protium acquired from
12 Barclays, correct?

13 A. The credit assets are. The liquid hedge fund, the billion
14 dollars, is not.

15 Q. So, roughly twelve billion acquired from Barclays?

16 A. That's correct.

17 Q. The remainder from other sources?

18 A. Well, that's the one billion is an actively traded
19 portfolio. The twelve billion was acquired from Barclays.

20 Q. And to acquire the twelve billion dollars in assets from
21 Barclays, Protium received a loan from Barclays for a little
22 over twelve million dollars, correct?

23 A. Well, unfortunately, we're approximating the numbers.

24 The -- there was -- third party capital was raised of about 500
25 million dollars. There was a loan of about twelve billion

1 dollars and securities of about twelve and a half billion
2 dollars.

3 Q. So, just to be clear, Barclays loaned Protium about twelve
4 billion dollars to take about twelve billion dollars worth of
5 assets from Barclays and put them into Protium, correct?

6 A. It was -- it was a highly-levered vendor financed.
7 Meaning the then seller of the assets was financing through a
8 senior secured loan the bulk of the purchase that the newly
9 established entity was making. It was funded by a third party.

10 Q. There was a lot of terminology in there. Just to be
11 clear, Barclays loaned money to Protium to buy twelve billion
12 dollars worth of assets from Barclays, right? That's about it?

13 A. Again. Barclays lent on a senior basis money to a newly
14 established entity that had limited partner capital from an
15 independent third party. But yes, there was a loan of twelve
16 billion dollars secured on twelve and a half billion dollars of
17 assets.

18 Q. And those are all assets that used to be Barclays assets
19 on Barclays balance sheet, correct?

20 A. Correct, yes.

21 Q. And those were the assets that you used to manage when you
22 were at Barclays, correct?

23 A. About a third of them were.

24 Q. So, about four billion of those?

25 A. Correct.

1 Q. Out of included assets that were assets purchased by
2 Barclays as part of the Lehman transaction, correct?

3 A. A very small percentage. I think three or something. I
4 remember looking into it once in anticipation of being asked
5 and it was two or three or four percent. I can't remember now.

6 Q. And when Protium was set up and these twelve billion
7 dollars in assets were taken from Barclays' balance sheet and
8 put into Protium, you left Barclays to manage those assets
9 through C 12, correct?

10 A. My team and I left to spawn the new asset management
11 company and we -- with the objective of rais -- of entering
12 into other transactions and raising third-party capital. And
13 the first transaction that we did was this Protium transaction
14 that we did with Barclays where we were acquiring this twelve
15 and half billion dollar portfolio.

16 Q. And you get paid management fees as part of managing this
17 portfolio of Barclays' assets, correct?

18 A. Well, they're not Barclays' assets anymore. They're owned
19 by an independent entity. The upside of that entity, the
20 equity or partnership interest if you like, are all owned by
21 third parties and it is the entity not Barclays that pays the
22 management fees.

23 Q. And you get paid the management fees before any interest
24 is paid on this so-called senior obligation that Barclays
25 extended to Protium to secure the purchase of these assets in

1 the first place, correct?

2 A. Well, we get some of our management fees paid senior and
3 we get all of the performance fees paid, you know, not for many
4 years actually, for -- and mostly at the back end of the
5 transaction.

6 Q. And what you get at the front end of the transaction is
7 roughly forty million dollars a year for ten years?

8 A. Yeah, I think it's forty-five million dollars a year is
9 the senior management fee.

10 Q. And that's off the top, correct?

11 A. What do you mean off the top?

12 Q. That's before any interest is paid on the loan, correct?

13 A. It is actually structured that way. I mean there is a lot
14 of cash that comes off of the assets so it's not a significant
15 issue.

16 Q. And when Barclays took those assets off Barclays' balance
17 sheet and put them into Protium, they moved those assets over
18 at the book value at which Barclays was carrying those assets,
19 correct?

20 A. Correct.

21 Q. And those would have been at least in part book values
22 that you had determined while you were managing some of those
23 assets over at Barclays, correct?

24 A. Well, actually, we were very, very conscious of this at
25 the time. As I say, only 4 billion dollars of the assets --

1 there's 12 billion -- if I can use the 12 just to avoid the .5,
2 12 billion dollars of assets, only 4 billion dollars of those
3 assets were assets that were managed by my group. Two billion
4 dollars of those assets were actual loan collateral that had
5 been -- and none of this stuff that was originated by us as
6 loan collateral was subject to some very strict marking
7 policies because these were very, very liquid assets.

8 Nevertheless, at the time of the transaction, we were -- I
9 left with my team, which is the reason why there has to be
10 significant fees associated with the transaction because it was
11 a large group of people that were associated with forming the
12 management company, and we were -- we were absolved of our
13 responsibilities for managing the assets or valuing the assets
14 on the part of the firm. And an independent group that was
15 part of another group in the firm was put in place to ensure
16 that it wasn't just product control, but they're also traders
17 from another front office team that were reviewing the marks.
18 So, there was an adequate -- adequately independent transfer
19 price on the transaction.

20 Q. So, the answer to my question was, yes with an
21 explanation. Included in the assets were assets that you had
22 valued when you were working at Barclays, correct?

23 A. The assets I had --

24 Q. You can answer my question yes or you can answer yes and I
25 can ask for an explanation.

1 A. I think I can actually answer it no. That the sale price
2 was not based on my marks, it was based on independent marks
3 performed by another group.

4 Yes, it is true that over the life of those assets in the
5 firm, I had had involvement in marking them. So, necessarily,
6 there was some relationship between where we had marked them
7 and where the independent group who was responsible for
8 establishing the sale price marked them but it wasn't my price,
9 I guess, to avoid the situation where I was selling to myself.

10 Q. And when you moved over to C12, you moved over with
11 Mr. Yang as well, correct? And he was with you at Barclays?

12 A. That's correct.

13 Q. He was part of that management team you described?

14 A. Yes, that's correct.

15 Q. And there was about forty of you that moved over?

16 A. That's true.

17 Q. All from Barclays?

18 A. Yes.

19 Q. Let's go through some other names. Mike Keegan is a name
20 that's come up from time to time as to some of the documents
21 you talked about. Who's Mr. Keegan?

22 A. Mr. Keegan is still at Barclays and he runs -- I don't
23 actually know what he runs now. At the time he was running one
24 of the principal trading units.

25 Q. So, he had a position analogous to yours? You ran a

1 principal trading unit as well, correct?

2 A. I was sort of -- Mike's position was senior to mine. He'd
3 been with the firm for a very long time and at various points
4 it had been contemplated that I could have worked for Mike, so
5 I would view Mike as senior to myself.

6 Q. So, going back to my question, he was a principal trader
7 like you were a principal trader?

8 A. Well, it's an investment bank with risk-taking
9 capabilities. So, that was a group -- I think it just happened
10 to have that name. He had a number of businesses under him and
11 he was senior to me.

12 Q. You're not denying that you were a principal trader, are
13 you, sir?

14 A. We -- no. We had a -- we had a principal trading business
15 that was -- had the narrow focus at the time of mortgages.
16 Mike had a very broad mandate.

17 Q. Putting aside the breadth of humanity, you were a
18 professional trader trading mortgages that were owned by the
19 bank, he was a professional trader trading other assets owned
20 by the bank, correct?

21 A. Yes.

22 Q. And this principal trader formulation that we've used, is
23 it also referred to sometimes as proprietary trading?

24 A. Yes, sometimes, yes. But although that's one aspect of
25 the role.

1 Q. And also referred to sometimes in shorthand as prop
2 trading, you were a prop trader?

3 A. Yes. That's one facet of the business, yes.

4 Q. And as a prop trader, you ran what is referred to within
5 institutions like Barclays you had a P&L center or a P&L desk
6 that you were responsible for, correct?

7 A. Yes. We actually had multiple.

8 Q. You had multiple P&Ls?

9 A. Um-hmm.

10 Q. And when we talk about P&L desks, we're talking about
11 profit and loss desks, correct?

12 A. Correct.

13 Q. And you are supposed to buy and sell assets and earn
14 income for the bank and for yourself by doing that, correct?

15 A. Correct.

16 Q. And, in fact, a substantial portion of your compensation
17 is based on the P you generate and the L you would reduce or
18 eliminate for your desks, correct?

19 A. Among other -- certainly from Mike's position and
20 increasingly for mine plus other things that as managing
21 directors in a large firm like Barclays we were asked to do.
22 There was a big advise -- internal advisory component of it as
23 well as just the direct profit associated with the trading
24 unit.

25 Q. Well, let me guess, everything else being equal if you

1 don't generate a profit, you're going to see it in your take-
2 home compensation that year, correct?

3 A. That would be the -- that would be the normal situation.
4 These were very unusual times.

5 Q. And in connection with the Lehman transaction, you wore
6 many hats but one of the hats you were still wearing was the
7 hat of the prop trader who was going to take on some of these
8 assets and manage them and trade them and dispose of them,
9 correct?

10 A. Right. But not under those proprietary trading books.
11 Under separate books that were associate -- there were three
12 sets of books; books associated with the acquisition assets
13 from Lehman, the books associated with the existing Barclays'
14 assets and then our propriety trading books. They were
15 separate. They were never comingled.

16 Q. And the books that were separate and not comingled, the
17 book of Lehman acquired assets, again, the ones that you were
18 going to manage, you were going to manage and try and maximize
19 your profit on, correct?

20 A. Right. Although that oversimplifies the relationship
21 between -- my job was to maximize the value of those assets.

22 Q. And you'd maximize the value of those assets by being able
23 to sell them or liquidate them at a price greater than the one
24 that you had ascribed to those assets when you took them on,
25 correct?

1 A. Well, or less than -- I mean this is why -- it's a risk
2 management process not just a valuation or disposal process.
3 There were assets that we had -- this is why it wasn't part of
4 the proprietary trading business. I mean the sizes of the two
5 activities were very, very different. As I described earlier,
6 our proprietary traded business maybe ran one to two billion
7 dollars in capital. We were talking about fifty billion
8 dollars of assets. So, they were separate and the objective
9 was to maximize, as I described earlier, maximize the
10 realizable value. At times, we concluded that the best thing
11 for us to do was to dispose of an asset that we actually owned
12 above where were being shown bids. Because the right risk
13 management decision actually was to dispose of it.

14 Q. Going back to my question again and you can answer my
15 question with a yes, no, I don't know, and then give me an
16 explanation. To go back to my question, with respect to the
17 Lehman assets that were part of one of these three buckets that
18 you were going to be managing --

19 A. Right.

20 Q. -- you were aiming to maximize the gain or the recovery on
21 those assets over a period of time, correct?

22 A. Yes.

23 Q. And one of the ways you would do that is by selling them
24 at a greater price than the one that was ascribed to those
25 assets upon acquisition, correct?

1 A. Well, to maximize them I would sell them at the -- or I
2 would either hold them or sell them to maximize their value.

3 Q. And a real simple concept here, so, one of the variables
4 in whether or not you maximize your profit is the price that
5 you've ascribed to that asset on acquisition, correct?

6 A. If you view it that the objective is the profit relative
7 to a price that was given to the assets at the time they were
8 taken onto the balance sheet then yes. But really the
9 underlying objective is just to maximize the value of the
10 assets, not maximize the value -- maximize the profit.

11 Q. Is what you're saying, sir, you either try to maximize the
12 profit or minimize the loss. Is that what you're talking
13 about?

14 A. Maximizing the profit, if you like, would be a consequence
15 of maximizing the realizable value of the portfolio, so yes.

16 Q. And in either event, no matter how you slice it, one of the
17 driving variables in that exercise is what price you ascribed
18 to that asset at acquisition, correct?

19 A. Yes. But --

20 Q. It's where you start and then where you end up, correct?

21 A. If the primary objective -- and I'm not even sure that's
22 the right way around. If the primary objective seems to be
23 profit, then it's very, very important where you originally --
24 what value you originally ascribe to the assets. If the
25 value -- if the objective is to just maximize the value, which,

1 after all, is my job, then it doesn't really matter where we
2 are on it. It's just is this the right thing to do to either
3 hold the asset or sell the asset. And that was the dialogue
4 that I would have with my management on a daily basis; at least
5 a weekly basis.

6 Q. You described earlier in your testimony that when these
7 assets came onto Barclays books, you didn't acquire them an
8 asset at a time, correct? It came over in bulk, right?

9 A. Right.

10 Q. In the usual course where you acquired an asset that you
11 were trading, there would be an acquisition price. There'd be
12 a price at which you did the trading, correct?

13 A. Right.

14 Q. And that would be the price that you would start with,
15 correct?

16 A. If we bought something, we'd have a price of where we
17 bought it.

18 Q. And you didn't have that in this case, correct? These
19 assets didn't come over with an asset by asset purchase price,
20 per unit price, correct?

21 A. No.

22 Q. You laid out forty-five billion dollars and you got a pool
23 of assets that were transferred over to you over a period of
24 time, correct?

25 A. Well, one of the things that we did was to lend the forty-

1 five billion dollars and then there was a portfolio of assets
2 that were booked, yes.

3 Q. And those assets came over to you and came onto the
4 Barclays' books at a couple of different points in time,
5 correct?

6 A. Multiple points, I think, yes.

7 Q. There was a slug of assets that came over the night of the
8 18th of September into the early morning hours of the 19th,
9 right?

10 A. Yes.

11 Q. And those were the assets that were delivered from JPM
12 through to your custodial agent, the Bank of New York, correct?

13 A. Yes.

14 Q. There were still other assets that were delivered by JPM
15 much later in the year, correct? Sometime around December of
16 2008, correct?

17 A. Yes.

18 Q. And putting aside those two large buckets of assets, there
19 were still some other assets that came over during the week of
20 the 22nd of September, right?

21 A. Yes. The clearing of those assets, yes.

22 Q. And came over at points even after that last week of
23 September?

24 A. Yes.

25 Q. But putting aside those other dribs and drabs of assets,

1 the two big pools were the initial inventory that came over the
2 night of the 18th early morning of the 19th and then the JPM
3 inventory which came over in December, correct?

4 A. Those are the two largest units by value, I think.

5 Q. And the initial inventory that came over Thursday night to
6 early Friday morning, included, as you said, a large position
7 of equities, correct?

8 A. On the Friday morning, yes, that's correct.

9 Q. Approximately, you said, eight billion dollars of equities
10 in that --

11 A. Yeah, I remember it being about eight billion dollars,
12 yes.

13 Q. And starting Friday, you began the risk management process
14 to hedge the risk associated with these assets, correct?

15 A. Yes, I guess from Friday we would have started to think
16 about it.

17 Q. So, among the various hats you were wearing starting
18 Friday morning, is you're identifying what's coming over,
19 you're risk managing it and then the ensuing days you are
20 parceling those assets off to different trading desks within
21 Barclays, correct?

22 A. That's an oversimplification.

23 Q. Many things in this case are. But among the steps you
24 took and broadly speaking, the hats you were wearing included
25 those three hats, right?

1 A. I don't think at that time we weren't really parceling
2 anything off to the trading desks. We'd made the decision that
3 to ensure the sensible ongoing risk management of such a large
4 portfolio of assets, that we wouldn't just push them into the
5 front -- to the normal front office businesses to trade because
6 we would lose track of them. So, we managed them on the desk
7 with some consultation of the individual desks within Barclays
8 and over time that we used those desks for some of the disposal
9 and for some of -- some of the desks acquired some of the
10 assets themselves. But a lot of them we traded directly off
11 the desk.

12 Q. And then the assets that were acquired by the desks,
13 you've seen reference to those transactions as internal sales
14 at Barclays, is that right?

15 A. Well, there were two ways we did it. One was that we
16 would sell some assets to -- there were really three ways that
17 we managed the risk. We would manage it ourselves, in which
18 case we would face the street.

19 Q. When you say "we", you mean --

20 A. My group.

21 Q. -- the principal mortgage trading group?

22 A. PMTG.

23 Q. Right.

24 A. Would face the street and manage the assets direct. Two,
25 we would seconder the assistance of a relevant expert from one

1 of the trading desks within the firm and they would advise or
2 help me manage a book that stayed within our group that they
3 were the experts so we'd help -- you know, we had to -- like,
4 the agencies was a good example of something where we really
5 had to use the agency trading desk but we didn't want to put
6 the assets in the agency trading desk.

7 And the third, and I think this was the minority of them,
8 was the best thing to do was for us to negotiate a price with
9 the relevant trading desk, sell it to the trading desk and then
10 they would -- they would manage the risk in their normal course
11 of their business.

12 Q. So, given that answer, so, would it surprise you if
13 Barclays has taken the position in this case that thirty-seven
14 billion dollars of assets that were acquired from Lehman were
15 sold internally?

16 A. Is that what they said?

17 Q. Well, would it surprise you if that's the position
18 Barclays had taken?

19 A. Thirty-seven billion sold internally? I guess it depends
20 on what time it was sold. I mean at one point or another some
21 of them would have been sold to -- to -- I mean they had to be
22 transferred, right, from the acquisition books to relevant
23 desks. So, maybe that's true.

24 Q. Maybe that's true.

25 A. But ultimately they had to be -- the assets had to leave

1 the firm.

2 Q. Well, my question was a very specific one. So, would it
3 surprise you if Barclays has taken the position in this
4 litigation that thirty-seven billion dollars of the assets that
5 were acquired were transferred and sold internally?

6 A. I'm trying to think -- well, I guess it must be. If they
7 say it's thirty-seven billion dollars it must be thirty-seven
8 billion dollars but I'm trying to think of what that would be
9 made at. That maybe -- I mean it's was a large portfolio of
10 treasuries. We did sell the treasuries to the trading desk
11 because that was at the most liquid end. The equities were
12 traded out of the firm directly, not transferred internally.
13 So, then maybe that is that its thirty-seven billion dollars
14 was actually traded through -- thirty-seven billion dollars, I
15 suppose, could have been traded through our own flow desks.
16 Because after all, our flow desks were the ones that face
17 customers so they were an important part in maximizing the
18 realizable value.

19 Q. So, as you think through this process and think through
20 this portfolio, it's possible that thirty-seven billion dollars
21 of these assets were processed first through internal sales at
22 Barclays and then those desks dealt with those assets, correct?

23 A. Right. But that may well have been instant -- you know,
24 it may well have been -- I wasn't part of preparing that
25 thirty-seven billion dollars number. So, it may well be

1 factually correct that thirty-seven billion dollars was traded
2 internally. However, I don't know how much of that instantly
3 traded out of the firm via those desks.

4 Q. You just don't know one way or the other?

5 A. No. Because we tra -- because, you know, even we
6 ourselves trade with our own -- or when I was at Barclays, even
7 we ourselves traded with our own trading desks. So, if I sold
8 something to a desk and then they sold it to a customer, we
9 couldn't face customers. So, then they would have faced the
10 customer and that would have presumably been captured in this
11 internal sale construct even though it really was leaving the
12 firm.

13 Q. And do you know one way or the other, sir, whether the
14 prices of which these assets, this thirty-seven billion dollars
15 of assets, were sold internally at Barclays? Whether any of
16 those internal sales prices were used to account for these
17 assets for acquisition purposes?

18 A. Some of them must have been. But one of the reasons for
19 constructing the process in the way we did was to ensure that
20 there was as much independence, you know, put on that -- those
21 initial valuations as we could rather than just letting the
22 trading desks which it would have taken the sum of the trading
23 desk to bids on the Thursday, Friday, say of the week, it would
24 have been significantly lower, I anticipate, than the price we
25 actually paid. And so to avoid that happening, that was why we

1 had this centralized process.

2 Q. You're not disagreeing that at least on some instances
3 those internal sales prices where one Barclays' person is
4 selling the security to another Barclays' person, those prices
5 were used as the prices for those securities on the acquisition
6 balance sheet?

7 A. Well, I don't know whether they were used on the --

8 Q. You don't know?

9 A. -- on the acquisition balance sheet was -- the acquisition
10 balance sheet prices were prepared by product control
11 independent of the traders. But some of the things that were
12 factored into that was where traders would trade the security.
13 And so, presumably, some of those were both internal transfer
14 prices as well as external sales because those were the best --
15 the best way to estimate a value for the purposes of the
16 acquisition balance sheet.

17 Q. Well, you don't know, sir, all the things that the PCG
18 people looked at when determining what's the best way of
19 estimating the value of a security, do you, sir?

20 A. I don't know all of them, no.

21 Q. You do know that on certain occasions, they, in fact, used
22 internal sales prices amongst Barclays' personnel as the price
23 for the acquisition value of a particular security, correct?

24 A. No, I don't know that -- that they used for certain
25 internal prices. But I could well believe that out of the many

1 tools that they had available to them, to attempt to put line
2 by line valuations on thousands and thousands of line items may
3 well have been to say the so-and-so trading desk acquired or
4 sold a security at a particular price on a particular date that
5 was relevant and capable of being used in the acquisition
6 balance sheet.

7 Q. And do you know one way or the other --

8 A. Although I am -- to answer your question, I am surprised
9 that's the case because the acquisition balance sheet was being
10 struck as of a particular date and that was on the 22nd, I
11 think. It had to be as of the date. And really, many of those
12 transfers that you're alluding to would have had to have
13 happened at a much later date. So, I don't know who they --
14 whether they were definitely used. They could have been an
15 interesting indicator to product control but they couldn't have
16 been used in isolation.

17 Q. Well, if they were, in fact, transactions that occurred
18 after the 22nd, that would have been after the closing date,
19 correct?

20 A. Correct.

21 Q. And you know that some of those transactions, in fact, did
22 take place well after the 22nd, correct?

23 A. Correct.

24 Q. And if I understood your prior answer, you'd be surprised
25 if, in fact, those post-September 22nd internal sales

1 transaction prices were, in fact, used by PCG as the
2 acquisition prices for those securities, correct?

3 A. Well, that would have had -- PCG would have had to have
4 made an independent assessment that it was appropriate to use
5 them, that's all I'm saying. It's not just as simple as, well,
6 they had the transfer price we'll use those. They must have
7 made an assessment. Although, I am -- I wasn't involved in
8 that process. After all, my job was to just maximize the --
9 minimize the risk to the firm and maximize the realizable
10 value.

11 Q. When you say you weren't involved in that process, you
12 weren't involved in the determination process of the PCG
13 thought?

14 A. The product control PCG, yes, that's right.

15 Q. I'm sorry.

16 A. Yes.

17 Q. We should both try to avoid the abbreviations; there's a
18 lot of them. So, PCG Product Control Group.

19 A. Yes. I was involved -- I was asked, obviously, they asked
20 me about my opinion on things and on securities. So, I can't
21 say I was not involved at all but I wasn't driving that
22 process. I wasn't responsible for that.

23 Q. Well, let's drill down a little bit into your role in the
24 process of getting the securities onto Barclays' books and you
25 referred, I think, to that process as the on-boarding process

1 in some of the documents I've seen. Is that a familiar term to
2 you?

3 A. I may have used that. I could have used that, yes.

4 THE COURT: Mr. Tambe, before we start drilling, I
5 think we all need a lunch break at some point and I'm sensing
6 from the number of documents in the book, although you may not
7 use them all, that your examination may be a lengthy one. So,
8 I suggest that we take a lunch break at this point unless
9 there's a more logical time to do it in your view.

10 MR. TAMBE: This is a logical time to take a break.

11 THE COURT: Fine. And if -- I realize that estimates
12 are mostly wrong, Mr. Schiller's fifteen minutes having become
13 at least fifty instead of fifteen, can you give me some
14 indication of how long you think you may be in your examination
15 of the witness? And I'm only asking that so that we can
16 schedule the chambers conference that had been requested at the
17 close yesterday.

18 MR. TAMBE: I do anticipate it will be the bulk of the
19 afternoon.

20 THE COURT: Okay. My suggestion then is that we plan
21 that chambers conference to be the event which will occur at
22 the conclusion of Mr. King's examination and that it will be
23 most convenient for that to take place right here in the
24 courtroom. We'll simply clear the courtroom of those
25 spectators and others who are here who don't need to be part of

1 that conference and we'll do that at the end of the afternoon.
2 Does that work for everybody? Fine. We'll take a break till
3 2:00.

4 (Recess from 12:41 p.m. until 2:05 p.m.)

5 THE COURT: Be seated, please.

6 MR. TAMBE: Your Honor, may I proceed?

7 THE COURT: Please.

8 RESUME CROSS-EXAMINATION

9 BY MR. TAMBE:

10 Q. Mr. King, I want to draw your attention back to a short
11 bit of testimony from this morning. And if we could just pull
12 it up on the rough so you know what I'm asking you about.

13 MR. TAMBE: It's page 4992, the next page, please.

14 And if you could highlight lines 6 down through 16, please.

15 Q. You were asked a couple of questions this morning and you
16 gave those answers. I want to start with the second question,
17 whether any secret agreements or understandings between you and
18 your team or Barclays and anyone at Lehman, with regard to the
19 valuation of assets and the sale transaction that was presented
20 to His Honor, as far as you know, and you said "Certainly not."
21 There's about three things going on in that question, so I want
22 to try and unpackage it. Certainly you're not aware of any
23 secret agreement being presented to this Court, correct?

24 Right?

25 A. Yes.

1 Q. Okay.

2 A. Sorry, yes.

3 Q. So now let's talk about whether there was any secret
4 agreement between Barclays and Lehman. And let's split up the
5 secret from the agreement, okay? Is it fair to say that your
6 understanding from the beginning of that week, the week of
7 September 15th, was that Barclays was not going to purchase any
8 of the securities that it intended to purchase at Lehman's
9 values; Barclays was going to assess its own values for those
10 securities, correct?

11 A. Well, I know that I was asked by my management team to
12 produce a valuation for those securities, yes.

13 Q. And it was your understanding that, at least as far as the
14 negotiations were going, there were negotiations that were
15 being had between Barclays and Lehman as to what price Barclays
16 was willing to pay to purchase those securities, correct?

17 A. I -- that I don't know. I know that I provided my
18 management with a valuation, you know, an estimate of the
19 valuation of the securities, and I know that they were having
20 negotiations, but to what extent that valuation was discussed
21 explicitly or not I don't know.

22 Q. Fair enough. It wasn't your expectation that Barclays was
23 going to purchase any of the Lehman securities at Lehman's
24 valuation, was it?

25 A. I wouldn't have expected so, no.

1 Q. No one on the management team told you that?

2 A. No.

3 Q. Okay. And in fact you recounted a conversation that you
4 had with someone from Lehman's management team, Bart McDade,
5 correct?

6 A. Yes.

7 Q. And in which you said you didn't see the mortgage-backed
8 securities valued the same way that you saw -- that Lehman was
9 valuing them, correct?

10 A. Well, that Lehman was valuing them as of Friday, yes.

11 Q. As of Friday, right. And you made clear to Mr. McDade
12 your disagreement with those Lehman values, correct?

13 A. Correct.

14 Q. By the way, other than those mortgage-backed securities,
15 do you recall discussing any other securities specifically with
16 anyone from Lehman early on in the week, and your valuation
17 views of those securities?

18 A. Not -- no, not on the Monday.

19 Q. Okay. And as far as you were aware, there were at least
20 discussions then taking place between the Lehman management
21 team and the Barclays management team about what the
22 appropriate level or value would be for those securities; is
23 that fair?

24 A. I don't know that was the case. No, I know there was a
25 negoti -- I mean, self-evidently there was a negotiation

1 continuing between Barclays and Lehman about the acquisition of
2 the U.S. business, but I really don't know to what extent the
3 valuation of the securities was being discussed, other than I
4 was asked to talk to Bart McDade about my assumed valuation for
5 mortgage-backed securities. But I don't actually know what
6 dialogue occurred between the two firms in relation to the
7 overall valuation of the portfolio.

8 Q. So going, then, to the first question you were asked this
9 morning, "Are you aware of any secret agreements between Lehman
10 and Barclays during the week of September 15th through the
11 closing in connection with the sale" and you said no in answer
12 to that. You're not aware of any agreements between Lehman and
13 Barclays about the valuation of the securities during that
14 week --

15 A. That's --

16 Q. -- right?

17 A. That's correct.

18 Q. And so, at least as far as you're concerned, they were a
19 secret to you, correct?

20 A. I'm not sure I follow. What's a secret to me?

21 Q. If there was an agreement between Barclays management and
22 Lehman management about a value at which Barclays was going to
23 purchase securities from Lehman, that was an agreement not
24 shared with you, correct?

25 A. I was not aware of any secret agreements about valuations,

1 no.

2 Q. And you were aware all along that Barclays was not going
3 to purchase those assets at Lehman's valuations, correct?

4 A. Well, I know that -- I don't know whether I knew all the
5 way along. I knew exactly what was being agreed by the
6 Barclays negotiating team and the Lehman people. But I know
7 that my valuations were being provided to management, and I
8 know it was resulting in things that happened during that week
9 that certainly, as far as I could see, used my valuations.

10 Q. And your valuations were generally lower than those of
11 Lehman?

12 A. Well, my valuations, one, were current and, two, were
13 reflecting where we would be willing -- where I thought I
14 could -- we could realize the value of those securities. They
15 didn't reflect Lehman's marks in the week before, you're
16 correct.

17 Q. It's a simple math question: Your values were lower than
18 Lehman's values?

19 A. Well, they were from different days under different
20 conditions, yes.

21 Q. And lower?

22 A. My number was lower than the Lehman number, yes, as I said
23 earlier.

24 Q. Now, your numbers that were being provided to management
25 were numbers that management, as you said, was using in various

1 events that were occurring during that week, correct?

2 A. I assume so, yes, yes.

3 Q. And, I think, in the morning you said you were privileged
4 as an employee of Barclays to be given this awesome
5 responsibility of valuing securities, correct?

6 A. Well, I think it was a very privileged position to be in
7 to be -- you know, to have the -- you know, my team's opinions
8 used in the negotiations. So, yes.

9 Q. Privileged, and it was a responsibility that you felt,
10 right?

11 A. Huge responsibility, yes.

12 Q. And you wanted to be accurate when you spoke with
13 management about what it is that you were dealing with in
14 valuing these securities, correct?

15 A. Accurate and -- accurate's a funny word. I needed to
16 provide them simple but relevant information that they could
17 use.

18 Q. And I trust you were describing the serious problems you
19 were having with valuing the securities. And all the detail
20 that you described to this Court, you used the same words with
21 management, correct?

22 A. I will have certainly used the same words or similar words
23 to describe the uncertainty in the market and the problems with
24 these particular types of securities and the information that
25 we were dealing with. But they would have been familiar with

1 that as well, because it's not as if the securities were
2 entirely unique. You know, we had experienced similar issues
3 with valuations and realization ourselves.

4 Q. And so you were being full and frank with management and
5 sharing with them your concerns about the securities as you
6 uncovered these concerns, correct?

7 A. Well, when -- you know, on a timely basis and when quizzed
8 on it, when I thought it was relevant to escalate an issue,
9 yes.

10 Q. And you know that there were events that occurred that
11 week which were significant events which required you to
12 provide your input as to where you were at that point in time
13 on your assessment of values, correct?

14 A. Yes.

15 Q. Things like a board meeting at Barclays, correct? That
16 was a significant event that would have required input from you
17 and your time on valuation, right?

18 A. I assume so, yes.

19 Q. Well, you don't just assume so, you know so, right?

20 A. No, I don't. I mean, I assume -- I don't actually know
21 what board meetings were held or who was present or how my
22 information was used. I assume there were board meetings. And
23 I would assume that if it had anything to do with the
24 valuations of securities that it would probably use the
25 information that I provided or some derivative of it. But I

1 actually don't know what -- you know, what meetings were held.

2 Q. Well, and you would assume, I guess, in your list of
3 assumptions that valuation was probably a topic that was
4 discussed at the board meeting?

5 A. I don't know.

6 Q. No idea?

7 A. Barclays was acquiring a business that in some way
8 incorporated an asset purchase which included these securities.
9 So I would have been surprised if it didn't come up in any form
10 whatsoever. But in what form, I don't know.

11 Q. And to the extent the board did have discussions about
12 valuation -- this is the Barclays board -- you're not aware of
13 anyone other than you who was given a similar privileged
14 position to opine on the value of the assets that were being
15 purchased, correct?

16 A. Well, other people within the firm may well have had
17 opinions, including Mike Keegan that you mentioned earlier and
18 other people that had looked at the collateral, had -- familiar
19 with markets. And I would certainly have assumed that -- in
20 fact I know because I've been in meetings where Mike or others
21 were there, that they would have commented on my opinions.

22 Q. And judging from the information, then, that was coming
23 on -- coming out into -- coming to your attention from on high
24 when members of senior management spoke --

25 A. Right.

1 Q. -- did you hear them taking views that were contrary to
2 yours?

3 A. I don't rem -- I mean, they were -- I don't remember
4 specifically that, but I was -- you know, we were dealing with
5 our own assets as well and our own risk positions. And so
6 during the course of that week, it would have been the case
7 that the names that we've mentioned earlier, whether it be
8 Michael -- Mike Keegan or Rich or Patrick, would have
9 interrogated me and asked me about, you know, how confident I
10 was or what assumptions I was making or -- and I can't remember
11 how detailed they were, but it -- they would have certainly
12 been asking me sensible questions about how confident I was in
13 my results and what issues we might face in realizing that
14 value.

15 Q. Putting aside the board meeting, you were aware, were you
16 not, that some of the valuation work that you were doing was
17 also factoring into the asset purchase agreement, correct?

18 A. Well, I know that the assets that I was valuing were in
19 some way subject -- a subject of the asset purchase agreement,
20 yes.

21 Q. And that asset purchase agreement and the facts
22 surrounding the asset purchase agreement were facts that were
23 then being submitted to this Court for the Court's review and
24 ultimate approval of the transaction, correct?

25 A. Well, I never attended the court, so I don't know what was

1 actually discussed. But again, as with the board meeting, I
2 would -- you know, I would have assumed that in some way the
3 work that we were doing was useful output that was being used
4 somewhere.

5 Q. If you could turn in your binder to the binder that does
6 not have your name on it. It simply says "Witness Binder", if
7 you have that.

8 A. Yeah, this one.

9 Q. Okay. And if you could turn to Movants' Trial Exhibit 16
10 in evidence.

11 A. This is the one that just says "Witness", right?

12 Q. That's right.

13 A. I think I only go --

14 Q. There should be a --

15 A. -- I only go up to 15 --

16 Q. There should be --

17 A. -- I think.

18 Q. I'm sorry.

19 A. I think I only go up to 15.

20 Q. It's tab 7.

21 THE COURT: It's tab 7.

22 A. Oh, it's tab 7. Sorry.

23 Q. Are you there?

24 A. All right. Yes.

25 Q. And you'll see that tab 7 is a transcript of a conference

1 call that was held with senior management of Barclays the week
2 of the 15th of September. This particular call was held on
3 Wednesday, the 17th of September 2008. Do you see that?

4 A. Yes.

5 Q. Okay. Did you listen in on that call?

6 A. No.

7 Q. Were you provided with a transcript of the call?

8 A. Not knowingly, no. No. Don't think so.

9 Q. If you could just keep your voice up, please.

10 A. Yeah, sorry. No, I don't think so.

11 Q. And do you know whether any of the valuation work that you
12 had done featured in the call?

13 A. I don't know whether it explicitly did.

14 Q. Well, you were told they were to prepare analyses and
15 valuations that would be used by senior management for the
16 purposes of an analyst call?

17 A. No.

18 Q. If you could turn to page 2 of this exhibit M16, and the
19 third paragraph, which begins "The acquisition of the core".
20 The third sentence begins "We are acquiring". Do you see that?

21 A. Yes.

22 Q. And it says "We are acquiring trading assets with a
23 current estimated value of seventy-two billion dollars and
24 trading liabilities with a current estimated value of 68
25 billion, for a cash consideration of 250 million," do you see

1 that?

2 A. Yes.

3 Q. And those were not Lehman's valuations of these securities
4 that were being used in this report -- in this conference call;
5 they were valuations prepared by Barclays, correct?

6 A. I -- well, I -- this is a statement by Barclays, but I --
7 but I don't know what was the source of the seventy-two billion
8 dollars --

9 Q. No idea where that comes from?

10 A. No. It's not too dissimilar to the number that we were
11 looking at earlier, but I don't know what it -- I don't know
12 its source, no.

13 Q. Well, would you have expected Barclays, given what you
14 knew in the first few days of that week, to be stating to the
15 investing public at large that it was acquiring assets at
16 Lehman's values as opposed to Barclays' own values?

17 A. No, I would have -- no, I would have assumed that it was,
18 you know, numbers that John Varley would have been comfortable
19 with using. So it was sourced to one of his people, but how
20 I -- how and what they were using, or even here what it
21 included, I'm not too sure.

22 Q. And that's a good point, right? I mean, John Varley is
23 the chairman of the group, correct?

24 A. Um-hmm.

25 Q. And he would not be using numbers in a public conference

1 call unless he had some level of confidence from his people
2 that these are numbers that he could go public with, correct?

3 A. Presumably, yes.

4 Q. If you'd turn over to page 3 of this transcript. And
5 there's a question and answer at the bottom of page 3. And the
6 person who's being asked the question and who's answering the
7 question is a Chris, and I believe that's Chris Lucas. And
8 that's a name you're familiar with, correct?

9 A. Yes.

10 Q. Okay, and he is the group CFO, is that right?

11 A. Yes.

12 Q. Okay. And Chris says "I should say that, out of a total
13 of 72.7, which is a net number, the vast majority of those
14 assets are quoted equity, government and agency paper, CP money
15 market instruments and derivatives, and a relatively sizable
16 cash and matched book." Do you see that?

17 A. Yes.

18 Q. "There's a small amount of mortgage paper, which was
19 heavily written down and included in those numbers." Do you
20 see that?

21 A. Yes.

22 Q. And presumably that's a reference to the mortgage assets
23 that you, in your valuation of the mortgage assets, had written
24 down by about fifty percent?

25 A. Right.

1 Q. Right. Okay. So, again, this suggests that the numbers
2 that are being used are numbers that have been through the
3 Barclays valuation process, right?

4 A. Well, except that it's the 17th. So it's in the middle of
5 the week, so the valuation process was ongoing. But -- and
6 there were things that he describes as being included in here
7 that we hadn't been -- that I don't recognize: relatively
8 sizable cash, matched books. So I'm not exactly sure what
9 they're referring to in the 72.7.

10 Q. And when he refers to a small amount of mortgage paper,
11 you agree with his assessment there was a small amount of
12 mortgage paper, correct?

13 A. Well, in that -- in some regard, whether it's my initial
14 estimated value of three billion or so, or the Lehman estimated
15 value of six billion or so, it's still less than ten percent of
16 the seventy-two billion dollars that he has on the first line.

17 Q. So you do agree with them that, given the assets that you
18 were looking at, the mortgage assets were a small amount?

19 A. Well, I'm just saying that sub ten percent, I suppose,
20 could be construed as a small number.

21 Q. Okay, so you don't disagree with that sentiment that's
22 being expressed?

23 A. I'm saying it seems -- it's a reasonable comment to make
24 for a number that's less than ten percent.

25 Q. And consistent with what you knew, at least at that point

1 in the week?

2 A. I'm not sure I -- can you ask met that again? I'm not
3 sure I understand.

4 Q. That comment was consistent with what you knew at that
5 point in the week? I understand your knowledge changed later
6 on, but by Wednesday the 17th, that's consistent with what your
7 understanding was of what the assets were, correct?

8 A. Well, I -- you'll have to forgive me for not being precise
9 about the timings but, you now, at some point by the 17th, I
10 think the mortgage securities had been reduced to half -- that
11 it was half of the portfolio that we were taking. And if they
12 were using half of the valuation, the Lehman valuation, as the
13 estimated realizable value, then that would be about 1.5
14 billion dollars. So it would be a reasonable comment, if that
15 was what was embedded in that seventy-two billion dollars, for
16 Chris to say it's, you know, a small number.

17 Q. And if you turn over to the next page, there's a further
18 answer from Bob Diamond, again talking about the assets, and it
19 starts at the top of the page. And in particular, I draw your
20 attention to the first and second point that he makes. He says
21 "First and foremost, as Chris said, we got to choose which
22 inventory came with the deal." And that was consistent with
23 your understanding of how the assets had been identified that
24 you were valuing up until that point in the transaction,
25 correct?

1 A. I don't know how broad a statement that is but, you know,
2 as far as I could see at the time that I was looking at the
3 assets on the 17th -- I was just looking at the U.S. balance
4 sheet. So other than the fifty percent of the mortgage assets
5 that I think had come out of that conversation following the --
6 following my conversation with Bart McDade on the Monday
7 evening, I don't know how much selection really was occurring.
8 And this discussion was quickly superseded by the repo
9 transaction in which we had absolutely no ability to do asset
10 selection.

11 Q. Again, putting aside how the transaction changed, and I'll
12 have questions about that as well --

13 A. Right.

14 Q. -- just focusing on what the state of the world was on the
15 17th -- and in fact that's the state of the world that was
16 represented to this Court on the 17th, correct? It's what you
17 knew at that point in time?

18 A. I'm sorry, I don't mean to be difficult. What did I know
19 at that time?

20 Q. Okay, and here's what I'm asking: That Barclays got to
21 choose what inventory they were buying and not buying, that was
22 the nature and scope of the deal at that point in time,
23 correct?

24 A. I don't really know that, to be honest with you, because
25 I -- what I was looking at was the balance sheet of the U.S.

1 entity. And I -- you know, other than the mortgage assets over
2 which there had been some discussion, and at a very broad
3 level, fifty percent of the assets, there's -- I don't know of,
4 at least with the securities portfolio, there being that much
5 of a selection of what we took or what we didn't. This may be
6 a comment to a much -- for all I know, Bob may be responding to
7 a much larger question of things that were included in that
8 discussion, or not, because, after all, that balance sheet that
9 we were looking at earlier was already a net balance sheet that
10 excluded a lot of other assets and liabilities. So I don't
11 know how selected -- I don't know how narrow this question was.

12 Q. Again, I guess -- I don't want to talk past each other.
13 With regards to how narrow or broad the selection was, your
14 general understanding was that there was a selection process,
15 that Barclays was selecting particular assets to acquire and
16 particular liabilities to assume, correct?

17 A. I don't really know very much about that, to be honest. I
18 know there was that September 12th balance sheet that I was
19 asked to provide a valuation on the assets. I know there was
20 discussion at this time going on about buildings and another
21 liabilities and, you know, personnel costs and things. I don't
22 know what other things -- I wasn't part of that discussion. I
23 was just -- in relation to the securities, the long side of the
24 balance sheet.

25 So I don't really know. But within that area, other than

1 the fifty percent of the mortgages, I really don't remember
2 there being, you know, much discussion about a selection
3 process. I was asked to look at the long leg of that balance
4 sheet. And anyway, later on this day or the following day, it
5 was superseded by the discussions about the repo.

6 Q. Okay. So if there was selection going on, you weren't
7 involved in it? You're not disagreeing with what Bob says; you
8 just don't know one way or the other what selection, if any,
9 had occurred?

10 A. I could only reconcile it by it being that there was a
11 broader discussion about other assets or other liabilities that
12 I certainly wasn't part of. But then also I never saw any
13 evidence particularly at this point.

14 Q. Moving down to, I believe he says, the second thing, "I
15 think the second thing", and he goes on to say, "that is
16 important is we had just completed seventy-two hours of due
17 diligence on every position. So when it came time to make the
18 decision on what came, we personally had been doing due
19 diligence and were able to establish the marks." Do you see
20 that?

21 A. Could you say that again? Sorry.

22 Q. Sure. It's the last two sentences of that paragraph. "I
23 think" -- and it's highlighted on the screen, if that's
24 helpful.

25 A. Oh, sorry.

1 Q. You there?

2 A. Yeah.

3 Q. And it's the last part of that. "We had personally been
4 doing due diligence and were able to establish the marks." Do
5 you see that?

6 A. Right.

7 Q. And you understand that as a reference to the type of work
8 you and your team had been doing in reviewing the securities,
9 correct?

10 A. It's reasonable to assume so, yes.

11 Q. And you don't disagree with Mr. Diamond's description of
12 the work that you had been doing in doing due diligence and
13 being able to establish the marks, correct?

14 A. Well, it's -- in fairness, it's a little bit more final
15 than I would have described our results. But we were doing
16 work. We had -- we did have seventy-two hours. We had been
17 doing due diligence on as many positions as we could; not --
18 certainly not every. And to say that we established the marks,
19 well, we had come up with some estimates of marks that, as I
20 said earlier, we continued to revise and refine for many days
21 and weeks following.

22 Q. So the sentiment Mr. Diamond's expressing is a little bit
23 different than the sentiment you expressed to the Court, except
24 it's different in every way, correct? You didn't know what
25 CUSIPs you had, you didn't know what values to ascribe to them,

1 you didn't have the trustee reports, you didn't have the
2 offering documents; you didn't have anything. You were
3 guessing and making subjective decisions about marks, right?

4 A. As I said earlier, the word "guessing" sort of demeans the
5 efforts a little bit. But there are assumptions that were
6 being made and there were estimates. I -- there's a refinement
7 that seems to be suggested in that establi -- "were able to
8 establish marks". I guess one could say yes, if I provided
9 Patrick or Rich with marks, however crude the assumptions may
10 have been in establishing them, then it's legitimate for both
11 to say that. For me personally, establishing marks -- it
12 takes -- it took us a very long time to do that line by line
13 and for every security. At a high level, maybe it's adequately
14 correct.

15 Q. Or it's possible that your grave concerns and sentiments
16 about valuation risks were somehow not conveyed to Mr. Diamond?

17 A. Well, I don't know what was conveyed to Mr. Diamond, but I
18 would be -- I find it hard to believe that the uncertainty
19 around those marks was not conveyed.

20 Q. In describing the various problems you were facing, I
21 think you used as an example a couple of the schedules that you
22 had received from Lehman and talked about the problems you had
23 with even that -- you know, those extensive spreadsheets. And
24 so let's go to one of the examples that you talked about. So,
25 for example, if you turn to tab 4 in the -- take your time.

1 A. Sorry.

2 Q. Sure. Okay. If you could turn to tab 4 in the binder
3 that counsel gave you. And that was BCI Exhibit 909.

4 A. Tab 4.

5 Q. Do you have that, tab 4?

6 A. I thought -- maybe I'm looking in the wrong place. Oh, is
7 that in the other binder?

8 Q. Yeah, in the one that your counsel gave you. I'm sorry if
9 I wasn't clear.

10 A. Oh, sorry. It's a small space for a lot of binders.
11 Okay, tab 4, 909. Go ahead.

12 Q. And you remember discussing this on your direct, correct?

13 A. Yes, I remember being asked to --

14 Q. And attached to this cover e-mail that makes its way from
15 Lehman to you early the week of the 15th is a schedule, and
16 it's a schedule of securities, correct?

17 A. Correct.

18 Q. And you describe, for example, that very often what was
19 listed on the schedule was difficult to decipher and really
20 figure out what the security was, right?

21 A. Yes, certainly there were cases like that.

22 Q. And you encountered that problem and that difficulty with
23 all of the considerable resources of Barclays at your disposal,
24 correct?

25 A. Yes.

1 Q. It wasn't for want of manpower? I mean, if there was
2 someone within Barclays who could help you, you would be
3 reasonably able to get a hold of that person and say 'Help me
4 figure this out,' correct?

5 A. I don't think that was the limitation, no.

6 Q. You did describe other limitations: the press of time,
7 correct? There just, in your view, wasn't enough time to get
8 done the kind of detailed analysis you would have liked to do
9 that week, correct?

10 A. There's always going to be a time constraint if -- whether
11 we had -- and you could see this going through the entire
12 fourth quarter. Whether you have an hour, a day, a week or a
13 month, there's probably still more work that could be done to
14 help be certain about a position, and that was how we were able
15 to steadily improve the estimates that we were making. On the
16 first day that we received just this, then there will have been
17 a paucity of information on certain securities that would have
18 made it difficult; for some of them, not all.

19 Q. And when you say "paucity of information", I mean, you're
20 not just talking about paucity of information in your own
21 personal desk, your own personal group? Paucity of information
22 available reasonably to even an institution of Barclays'
23 breadth and scope, correct?

24 A. Yes. I mean, it's -- and that's not a -- but that's not
25 a -- an issue that is unique to the efforts that we were doing

1 here. If someone said "Stephen, can you bid on a particular
2 security," I might say "Can I get the offering document? Can I
3 get the trustee reports? Can I get" something or other, and
4 those might take time.

5 Q. And one of the pieces of information you had, whether
6 helpful or not, was you had Lehman's assessment of a value for
7 those securities, whether you agreed with it or not, correct?

8 A. From the previous week, yes.

9 Q. And in fact as the week went on and the transaction
10 changed and different schedules started being produced, you had
11 Lehman's values and sometimes you had JPMorgan's values, and
12 yet other times you had Bank of New York's values, correct?

13 A. That's correct.

14 Q. And sometimes you had values from all three?

15 A. Yes, that sometimes we will have had values from all
16 three, from different times.

17 Q. From different times. But you had some base of
18 information, some directional information that might be helpful
19 in your analysis, right?

20 A. I had some other people's opinions of value, yes.

21 Q. There's a document that's not in your binder, that I want
22 to hand out to you.

23 MR. TAMBE: May I approach, Your Honor?

24 THE COURT: Yes. Thank you

25 THE WITNESS: Thank you.

1 (Pause)

2 Q. Sir, I've placed before you a rather substantial document
3 marked Movants' Trial Exhibit 716.

4 MR. TAMBE: Your Honor, this document is not in
5 evidence. There's been no objection lodged to it. I'm going
6 to ask Mr. Schiller if there is any objection to our moving
7 this document in evidence. It's a document that was submitted
8 to the Court.

9 MR. SCHILLER: No objection, Judge.
10 (Movants' Trial Exhibit M716, e-mail referencing Schedules A
11 and B, was hereby received into evidence as of this date.)

12 Q. Just look at the cover e-mail. There's a reference there
13 to Schedules A and B. Do you see that?

14 A. Yes.

15 Q. And if you'd take a moment to flip through. And I'm not
16 going to ask you to read even selected readings from this
17 spreadsheet but just to familiarize yourself with the kind of
18 information that appears there.

19 A. Yes.

20 Q. You'll see there's a listing of CUSIPs, something called
21 par value.

22 A. Yeah.

23 Q. It may be helpful for you to go to the first page of the
24 spreadsheet --

25 A. Yeah.

1 Q. -- that has the headings.

2 A. Okay.

3 Q. So that's BCI-CG 56085. It says at the top "Schedule A".

4 Do you see that?

5 A. Yes.

6 Q. And it says "CUSIP". There's a number; there's a par

7 value, correct?

8 A. Yes.

9 Q. And you don't understand par value to mean market value,
10 do you, sir?

11 A. I wouldn't instantly, no.

12 Q. Okay. That that would be an unusual use of the word "par
13 value" --

14 A. I think so, yes.

15 Q. -- to suggest that was market value? And then there's a
16 description of the security, correct?

17 A. Yes.

18 Q. And you can flip through a few pages, because it's a
19 spreadsheet broken off -- broken across several pages. Tell me
20 if you see a column that has any kind of market value
21 information for any of these securities.

22 A. I don't, no.

23 Q. I'm sorry, what'd you say?

24 A. "I don't know."

25 Q. Okay. You were asked a question this morning; you gave

1 the following answer, on page 4995 --

2 MR. TAMBE: It's at the -- 4995. 4995. And it's
3 going to be at the bottom of the page; carry over to 4996.

4 Q. The question you were asked:

5 "Q. Incidentally, would the possession of Schedule A to the
6 purchase agreement provide the opportunity for the creditors'
7 committee to value them in September 2008 as you valued them in
8 that period?

9 "A. They could have undertaken the same process that we had."

10 Do you remember giving that answer to that question this
11 morning, sir?

12 A. Yes.

13 Q. Do you know whether Barclays or Lehman provided the
14 creditors' committee with all of the types of information that
15 you believed was essential to valuing these securities the way
16 you valued them during the week of September 15th?

17 A. I don't. I mean, they would have been able to obtain the
18 same -- I really meant that, on a CUSIP-by-CUSIP basis, they
19 could have, from this list, without a court resource, obtained
20 the same information about the securities that we did. I don't
21 know whether they would have had access to all of the same
22 expertise or not, but they would have been able to have access
23 to the same information. I -- at least theoretically. I mean,
24 I'd like to think that we do a -- you know, a very good job in
25 my unit and in my firm, but they could have undertaken the same

1 process. I think, with this information, this would have told
2 them the list of securities that made up the portfolio.

3 Q. And they could have then embarked on that same multi-month
4 process that it took Barclays three and a half, four and a
5 half, five months to effectively come up with acquisition
6 balance sheet prices, is that what you're saying?

7 A. I -- yes, I guess that's right. They could have done the
8 same process.

9 Q. I mean, I guess what you're saying is they could have
10 deduced it from the list.

11 A. Deduced what?

12 Q. The values.

13 A. Well, they could have come up with their assessment of
14 value, yes.

15 Q. Let's go back to another document you looked at this
16 morning. And you can put that big Schedule A, Schedule B
17 aside. Just one question before you do. Do you know who made
18 the decision to take prices off that schedule?

19 A. No, I don't.

20 Q. Did you ever see copies of those schedules with prices on
21 them?

22 A. I will have seen -- I may well actually have seen the
23 spreadsheets that led to the production of those, which may
24 have had more information than are in those schedules. So I
25 don't know who made the decision to include just that

1 information.

2 Q. Well, it's not just you may have, right? I mean, the
3 schedules you were getting from BoNY and from JPM and from
4 Lehman did have process. You may have disagreed with the
5 prices, but they did have the prices on there, correct?

6 A. They had their prices, yes.

7 Q. And they had BoNY's prices and JPM's prices, correct?

8 A. Well, no, I saw a JP -- no, because I saw J -- I don't
9 remem -- no, because we only saw JP's prices for the securities
10 that were in the Fed facility on the Wednesday -- Thursday.
11 Then we saw BoNY's for the stuff that was delivered on the
12 Thursday. I don't remember which ones we saw Lehman prices
13 for, if any of them, up to that point. So that means that
14 we -- what I do know is that we saw the Lehman prices for the
15 balance sheet as of the Friday the 12th. I saw BO -- JP's
16 marks for the Fed portfolio, some of which was delivered on the
17 Wednesday. And the I saw BoNY's marks on the Thursday. And
18 then more importantly, we were working on our own set of
19 values.

20 Q. And none of those values, the Wednesday JPM marks, the
21 Thursday BoNY marks, any Lehman marks, appear on Schedule A and
22 Schedule B filed with the Court, correct?

23 A. Not as you've shown me, no. That's correct.

24 Q. You were asked this morning about the asset purchase
25 agreement, and that is Exhibit 1.

1 MR. TAMBE: Is that tab 1 in the common folder?

2 Q. It should be tab 1 in the common binder, the witness
3 binder, without your name on it.

4 A. Tab 1 in the -- tab 1 in your witness binder?

5 Q. Yes.

6 A. Okay.

7 Q. You were asked about the seventy billion dollar long
8 position. Do you remember that?

9 A. The -- sorry, could you repeat that? The seventy --

10 Q. Yeah --

11 A. -- billion dollar long position?

12 Q. Yeah, on page 6 of the asset purchase agreement --

13 A. Yes.

14 Q. -- and, in particular, under purchased assets, subsection
15 (d) in particular, Steve.

16 A. Yes.

17 Q. You were asked about that item, government securities,
18 commercial paper, corporate debt, corporate equity, exchange-
19 traded derivatives, "with a book value, as of the date hereof,
20 of approximately seventy billion". Do you see that?

21 A. Yes.

22 Q. Having gone through the math we went through earlier,
23 that's not Lehman's book value for those assets, is it, sir?

24 A. I -- you know, I don't know -- I don't know the source of
25 that seventy billion dollars. I didn't contribute that. It

1 didn't seem to contradict the mats that we did earlier.

2 Q. Well, the mats that we did earlier have the seventy
3 billion in item (d), and then you said 'Well, this doesn't
4 include the mortgage-backed securities.' So that's another two
5 and a half billion. That's 72.5. And that's the number that
6 your chairman, Mr. Varley, used in the analyst call, correct,
7 the number that had been vetted by Barclays? It was a Barclays
8 number?

9 A. I don't know that to be -- I mean, it's -- there's a good
10 addition of two and a half to seventy to make seventy-two and a
11 half. I can agree to that. But whether that was the -- you
12 know, whether those are the two same numbers or the source of
13 them I don't know.

14 Q. Well, if that was Lehman's book value for those assets,
15 that's not the price you were prepared to pay for those assets,
16 correct?

17 A. No, it was -- I think the number that we calculated was
18 based off of the Lehman balance sheet -- the Lehman balance
19 sheet as of the 12th, excluding the mortgages, adding in the
20 short-term assets.

21 Q. Well, that's also a bit of math that you did this morning,
22 correct? You --

23 A. Oh, I thought -- sorry, maybe I'm -- maybe we should go
24 back. I thought that was the --

25 Q. Well, let's go back to that.

1 A. -- question you were asking me.

2 Q. You were asked to look at this number, and then you were
3 asked to look at the balance sheet from September 12th --

4 A. Right.

5 Q. -- do you remember that?

6 A. Yes.

7 Q. And that was tab 2 in the binder that your counsel gave
8 you.

9 A. Right.

10 Q. And you did a bit of math this morning around that balance
11 sheet, correct?

12 A. Correct.

13 Q. Right, and you took -- this was BCI Exhibit 191. You went
14 to the clear version of that --

15 MR. TAMBE: -- which is behind tab 2, Your Honor, of
16 the Barclays binder.

17 A. Right.

18 MR. TAMBE: Do you have 191C, Steve?

19 Q. And you did some math. You said you started with the
20 sixty-five billion that appears there.

21 A. Yeah.

22 Q. You said 'Well, that calculation doesn't include the
23 short-term collateralized agreements,' whatever those are. So
24 you added ten to the sixty-five, right?

25 A. Right.

1 Q. And then you backed out two and a half, right?

2 A. I think we backed out six and a half, actually, didn't we?
3 We took off the entire amount of the mortgages.

4 Q. And that's how you came up with the seventy. You did that
5 bit of math?

6 A. We came up with less than seventy. We came up with sixty-
7 eight and a half.

8 Q. This balance sheet, Exhibit 191C, you don't know how that
9 was prepared, do you, sir?

10 A. No, other than --

11 Q. No idea what systems it pulled information from, do you,
12 sir?

13 A. Well, to say I have no idea is an odd comment because,
14 after all, it was supposedly the bank's balance sheet as of --
15 LBI's balance sheet as of the Friday evening. So I have some
16 idea how banks put their balance sheets together, but I don't
17 actually know their systems or anything. So I was given this
18 as a -- and told that this is the inventory, this is the
19 cumulative valuations according to Lehman's marks as of
20 September 12th.

21 Q. Right. And someone gave this to you, you said, Monday the
22 15th when you began the process of trying to figure out what it
23 is that Barclays was going to buy, right?

24 A. Yeah, I think that's the first time I saw it, yes.

25 Q. And you don't know whether this balance sheet was prepared

1 specifically for that purpose or not, correct?

2 A. I don't actually, no.

3 Q. So you don't know if there were negotiations that preceded
4 the preparation of this balance sheet, certain assets were
5 excluded, others were added, and this was prepared for purposes
6 of your analysis? You don't know, do you, sir?

7 A. Well, I don't know for certain, but it is -- it's LBI's
8 balance sheet by GAAP asset type as of 9/12 --

9 Q. Well --

10 A. -- and that was what it was represented to me as.

11 Q. Right, you're reading off the top of this balance sheet?

12 A. Yes.

13 Q. You haven't spoken to the person who prepared this balance
14 sheet, right?

15 A. Well, no, I haven't, but -- no, it -- no, I haven't spoken
16 to the person. But it was represented to me at the time that
17 that's what this was.

18 Q. And then if you go to the cover e-mail in Exhibit 191, the
19 second paragraph of that e-mail, this is an e-mail authored by
20 Jasen Yang, who you've told us worked with you, correct?

21 A. Works for me, yes.

22 Q. In fact, still does?

23 A. Yes.

24 Q. And he's trying to describe a reconciliation process in
25 that second paragraph, trying to tie out the numbers on that

1 9/12 document with schedules that you had been receiving from
2 Lehman, correct?

3 A. Correct.

4 Q. And he was unable to do so, correct?

5 A. Correct.

6 Q. His e-mail to you is from the 17th of September. Do you
7 see that?

8 A. Yes.

9 Q. Do you know whether subsequent to the 17th of September he
10 was able to definitively tie out lists of CUSIPs with this
11 so-called balance sheet that was provided to you?

12 A. I don't know subsequently, no. And I don't think we ever
13 did it on the Thursday, because we switched to focus on the
14 repo.

15 Q. Right, so whatever reconciliation effort was underway kind
16 of changed direction at that point?

17 A. Correct.

18 Q. Let's come to that part of the week now, the change in the
19 deal. From your perspective and the work that you had been
20 doing, the work that you were privileged to do in assessing the
21 values of billions and billions of dollars of securities, this
22 was a sea change in the transaction, correct?

23 A. On the -- sorry, on the Thursday?

24 Q. On the Wednesday into Thursday, yeah. The Fed repo.

25 A. The repo, right.

1 Q. It was a sea change in the transaction, from your
2 perspective, wasn't it, sir?

3 A. I don't know whether it was a sea change. I mean, it's --
4 it was, you know, another set of marching orders.

5 Q. Well, I thought you told us this morning that all this
6 work you had been doing, this difficult work of analysis, was
7 sort of set to the side because now you had a different
8 agreement and a different pool of collateral --

9 A. Right.

10 Q. -- to value, correct?

11 A. Right.

12 Q. Incredibly difficult stuff to do, right?

13 A. Right, but we'd just done that twice -- at least twice
14 before as well. So --

15 Q. But wasn't this a completely different set of securities,
16 sir?

17 A. No.

18 Q. Oh, it wasn't?

19 A. No. Some -- as we say, some -- I think I said it earlier
20 in my testimony that some of the securities that we'd been
21 looking at from the previous week and earlier on in that week
22 were also in the Fed facility, unsurprisingly. After all, it
23 was financing of securities that were on LBI's balance sheet,
24 or at least financed through LBI. So there was overlap. And
25 we were able to build on the work on the securities that we'd

1 already done, and commence work on the securities that we
2 hadn't looked at.

3 Q. Okay. So some of the work you'd done before was in fact
4 helpful to you even with the changed transaction?

5 A. Correct.

6 Q. Because, as you said, there was overlap in securities,
7 correct?

8 A. Correct.

9 Q. Now, I think you laid some numbers out on direct in terms
10 of the overlap and helping us put some dimension around the
11 overlap. And what's your recollection of what the overlap was?

12 A. Well, can I just be clear? I thought you were asking me
13 about the overlap between earlier on in the week and the work
14 on the Wednesday going into the Thursday. The overlap I was
15 talking about earlier, and on which I gave some dimension, I
16 think was to do with the Fed facility that we thought was going
17 to be delivered and the Fed facility that was actually
18 delivered on the Friday.

19 Q. Fair point. So the overlap that you were talking about
20 was the overlap between the securities you were looking at
21 earlier in the week and the Fed, correct?

22 A. No --

23 Q. That's what you --

24 A. No, the numbers I -- when I said there was some overlap,
25 and I gave some dimensionality to it earlier, I was describing

1 what we thought we were going to take delivery of on the
2 Thursday and what we actually took delivery of on the Friday.
3 I only alluded to the fact that there was overlap, and I don't
4 remember how much, and that we were able to reuse some work
5 from the work that we had done earlier on in the week and even
6 the week prior.

7 Q. So then let me go back to my question, because maybe I
8 misunderstood what you meant by "the overlap". When the deal
9 changed to involving the Fed repo in any way -- so the Fed repo
10 showed up on the scene, which was --

11 A. Right.

12 Q. -- you said, Wednesday or Thursday of that week, correct,
13 was the fact that now there was going to be a Fed repo involved
14 in some way -- was that a sea change, from your perspective, in
15 terms of the work that you were doing?

16 A. "Sea change" sounds very evocative. We had done work on
17 trying to ascertain: the list of securities on which we should
18 do work; a list of assets that we should do work the week
19 prior; on a list of securities that we should do work on early
20 on in the week; any revisions to that list of securities during
21 the course of the week because the balance sheet was changing;
22 and then a list of securities that was making up collateral
23 that had been posted to the Fed, that we knew about on the
24 Wednesday going into the Thursday.

25 In some respects, each -- you know, "sea change" is a bit

1 of a -- you know, it creates an image. All we did was to say
2 All right, now we have another list of securities. How many of
3 them do we know? How many of them are we already in the
4 process of evaluating? And how much new work do we need to do
5 and start the process again of providing my management and
6 estimate of another set of -- the valuation of another set of
7 assets?

8 Q. Well, did that materially change the amount of work that
9 you were doing, the fact that there was now this new dimension?

10 A. Well, we were working -- in what way was there a new
11 dimension? Sorry.

12 Q. The fact that instead of buying assets from Lehman, asset
13 lists that you had been reviewing, you were now going to get
14 these assets via the Fed repo facility, correct?

15 A. So it was just another set of assets, of which there was
16 significant overlap between that work and the work that we'd
17 been doing earlier on in the week.

18 Q. Okay. And that's the point that I wanted to get to, which
19 was there was significant overlap from the Fed -- the
20 securities that were in the Fed repo and the securities that
21 you had been looking at in the earlier part of the week, right?

22 A. Yes, and -- but I can't remember how much that was.

23 Q. Okay. So there's some overlap there?

24 A. Yes.

25 Q. And there's also overlap, then, between what's in the Fed

1 repo and what's in ultimately the Barclays repo, correct?

2 A. Yes.

3 Q. Okay. And your earlier testimony was about the overlap
4 between the Fed repo and the Barclays repo, correct?

5 A. Yes.

6 Q. And you had dimensioned that overlap roughly, saying
7 there's roughly thirty billion in overlapping value, correct?

8 A. I think that's right, yes.

9 Q. And there was another seven billion that never came over.
10 So that was a placeholder of sorts, seven billion, correct?

11 A. The -- do you mean the cash?

12 Q. The cash.

13 A. Right. So there was seven billion in cash.

14 Q. Okay, so seven billion in cash. Thirty billion of
15 overlap?

16 A. Yes.

17 Q. And then you said another ten to thirteen billion that was
18 new to you, is that right?

19 A. Right, depending on whose valuations you're using, yes.

20 Q. And when you say it's new to you, that -- are you meaning
21 to say that those are securities that you had never seen before
22 during that week?

23 A. I think that the bulk of them we had never seen before,
24 but some of them I think we had seen before. The vast majority
25 of them we had just not seen before.

1 Q. And I also thought I heard you say that the vast majority
2 if this ten to thirteen billion slice, which was not
3 overlapping, was comprised of equities; there were a lot of
4 equity positions in there?

5 A. That's correct.

6 Q. And I believe you said about eight billion dollars' worth
7 of equities, correct?

8 A. Well, I -- what I think I said was that there was -- I
9 remember there being -- in total, we ended up with an exposure
10 of about eight billion dollars to equities. I think there
11 was -- this is excluding converts and other things that are
12 equity-like, of which one billion dollars was in the original
13 Fed facility. So as I remember it, about seven billion dollars
14 of the ten-or-so billion dollars that came over that we hadn't
15 seen before was exchange-traded equities.

16 Q. Now, you had some analysis done of the overlap, correct,
17 and the valuation of the overlap? Do you remember that?

18 A. Later on.

19 Q. Yes.

20 A. Much later on. For the -- for when?

21 Q. Well, why don't we go to the document. It's Exhibit M777
22 in the green binder that has your name on it.

23 A. M777. Right.

24 Q. And you recognize that, sir, at least as an e-mail -- at
25 the top of page 1 of M777 as an e-mail exchange between Jasen

1 Yang and yourself? Do you see that?

2 A. Yes.

3 Q. And it's continuing a conversation between yourself and
4 Mr. Yang. And as you go further back in the e-mail chain,
5 there are other individuals involved in that chain, but this
6 entire chain makes its way to you. Do you see that?

7 A. Yes.

8 Q. Okay.

9 MR. TAMBE: Your Honor, we offer M777 in evidence.

10 MR. SCHILLER: No objection, Judge.

11 THE COURT: It's admitted.

12 (Movants' Trial Exhibit M777, e-mail chain between Stephen King
13 and Jasen Yang, was hereby received into evidence as of this
14 date.)

15 Q. And you'll see the e-mail chain begins on the last page of
16 M777 with an e-mail from the Fed to Gerry LaRocca. You see
17 that?

18 A. Yes.

19 Q. Who is Mr. LaRocca?

20 A. He's head of operations at Barclays.

21 Q. And someone who was involved in the mechanics of the repo
22 transaction?

23 A. Yes, I would expect, yes.

24 Q. Now, there are some CCs shown on there: Stephen M. Cutler
25 at JPMorgan, and Tom Baxter at FR -- at the Fed. Do you see

1 those two names?

2 A. Yes.

3 Q. Do you know who those folks are?

4 A. No.

5 Q. Now, this e-mail chain makes its way up to the first page
6 where Jasen is providing some analysis to you, and I want to
7 draw your attention to that analysis. And he's doing some
8 reconciliation of overlap and values ascribed by various
9 parties, do you see that?

10 A. Yes.

11 Q. And what he lays out there as facts, he says "list
12 provided from Fed to Gerard matches the list we obtained on
13 Thursday 9/18". Do you see that?

14 A. Yes.

15 Q. And you see that that's a reference to the list that was
16 sent by the Fed further down this e-mail chain; that matches up
17 with the list that you got -- had obtained on Thursday,
18 September 18th, correct?

19 A. Okay.

20 Q. So the lists match up, you see that?

21 A. Sorry, what do you mean the list matches up?

22 Q. You see Mr. Yang referring to the fact that the list
23 provided by the Fed as the list of Fed collateral matches up
24 with the list that you, Barclays, had obtained --

25 A. Oh, okay. Yes.

1 Q. -- during the week? You see that?

2 A. Yes, I do, yes.

3 Q. And that's consistent with your recollection of those
4 events, correct?

5 A. You know, I don't recollect exactly what we were trying to
6 do here, so --

7 Q. Do you have any reason to believe that Jasen got this
8 wrong?

9 A. No.

10 Q. Okay. Next bullet point, Jasen states Wednesday night,
11 "50.6 billion Chase MV", do you see that?

12 A. Yes.

13 Q. And you see that as a reference to market value ascribed
14 by JPMorgan Chase to this collateral, correct?

15 A. Yes.

16 Q. And the next bullet point down, Saturday list, "45.1
17 billion BoNY MV", do you see that?

18 A. Yes.

19 Q. Okay. And you know that that is the market value ascribed
20 to the collateral by the Bank of New York, correct?

21 A. Right.

22 Q. Okay. And that's not including the seven billion in cash
23 which was not valued by BoNY on Saturday the 20th of September?

24 A. I wouldn't assume so, no.

25 Q. So if you include the cash and the BoNY market value, the

1 total value there is about 52.1 billion dollars, right?

2 A. Right.

3 Q. And then in the next bullet point, Jasen reports "About
4 thirty-two billion of collateral overlapped. Total difference
5 in market value was less than one-tenth of one percent". Do
6 you see that?

7 A. Yes.

8 Q. And you understand that as a calculation done by Mr. Yang,
9 comparing the market values of Chase and the BoNY with respect
10 to the overlapping collateral, correct?

11 A. I'd have to try and think through what he was trying to
12 say there, but I believe it is -- that it's -- there's an
13 overlap between BoNY and Chase and that this similarity is --
14 in marks is high.

15 Q. Do you know as you sit here, sir, what is the similarity
16 in the Barclays valuation of that thirty-two billion dollars of
17 overlapping collateral?

18 A. Of just the thirty-two billion?

19 Q. Just the thirty-two billion.

20 A. I don't remember what the thirty-two billion dollars was
21 in isolation. I don't remember exactly what the thirty-two
22 billion dollars was in isolation. It was less than that.

23 Q. I'm sorry, less than what?

24 A. Less than thirty -- it would have been less than the
25 thirty-two.

1 Q. Yeah, your value would have been less than thirty-two --

2 A. Yes.

3 Q. -- but you can't say by how much?

4 A. I can't say by how much.

5 Q. By billions?

6 A. Very, very feasibly, yes.

7 Q. Several billion?

8 A. I -- I -- well, we were -- if the collateral -- I think we
9 ended up assuming that the collateral in aggregate was about
10 three -- what did we end up with? If there was about forty-
11 nine billion of collateral, including the seven billion dollars
12 of cash, that was forty-two billion dollars, and I think we
13 estimated that to be worth about thirty-nine. So it can have
14 been -- it can have been a couple of billion, but I wouldn't
15 have expected it -- but it couldn't have been more than about
16 three. But I don't know the breakout between the thirty-two
17 and the other ten.

18 Q. So you have thirty-two billion of overlapping collateral,
19 you have seven billion of cash, correct?

20 A. Right.

21 Q. And you have another ten billion of securities that you
22 had not seen before, correct?

23 A. Ten billion also, yes, that's right.

24 Q. And the ten billion that you're referring to, that's ten
25 billion by your calculation or by BoNY's calculation?

1 A. I'm being -- I'm being so approximate that I can't --
2 that's why I was sort of saying ten to thirteen billion dollars
3 from recollection of things from a very long time ago. I
4 remember -- you know, I remember that there was -- I remember
5 the cumulative differences between my assessed valuation of the
6 portfolio and the -- what I -- what would have probably been
7 the BoNY marks at the time. The exact breakdown I can't
8 remember exactly. But if I was to take thirty billion dollars
9 plus seven billion dollars of cash plus ten billion dollars
10 approximately, I would have ended up with a number of about
11 forty-seven, which I remember later on in the week was accrued
12 assessment of a first guess of what I thought the value of the
13 collateral was. So I'm sort of backing into it, unfortunately.
14 Q. Just looking at the data that Mr. Yang has gathered there,
15 he's got BoNY valuing all of the collateral, putting aside the
16 seven billion of cash. So BoNY's valued the noncash part of
17 the collateral at forty-five billion, and thirty-two of that
18 overlaps with JPMorgan, right?
19 A. Evidently, yes.
20 Q. Right, so that leaves thirteen billion by BoNY's valuation
21 that is not overlapping, correct?
22 A. Right.
23 Q. Okay. Which you value at ten?
24 A. Well, as I say, I'm trying -- you're -- I'm trying to do
25 that from memory. I doubt that can have been the -- I doubt

1 the full amount of the discount -- well, the full amount of the
2 difference, sorry, between the BoNY marks and my marks was
3 attributable to the collateral that we hadn't seen before. So
4 there is an inconsistency there, but I can't remember exactly
5 when it was. I know that what the cumulative amount needs to
6 be is about three billion dollars or so difference, assuming
7 that we're factoring in the seven billion dollars of cash, not
8 the securities that were ultimately delivered in lieu of the
9 seven billion dollars of cash. But I don't remember the split
10 of that difference between the thirty-two billion dollars of
11 overlapping collateral and the thirteen billion dollars by BoNY
12 marks of the incremental collateral.

13 Q. Well, are you suggesting that you had bigger price
14 differences with respect to the thirty-two billion dollar
15 collateral, or was it more of a concern on the stuff that you'd
16 never seen before?

17 A. Well, it depends at exactly what minute you're asking me
18 that question.

19 Q. I'm asking that question right now.

20 A. No, well, no, I understand you're asking me the question
21 now. But as of what moment are you directing the ques --
22 asking me to remember?

23 Q. Everything you know right now. Everything you know about
24 the valuation right now. What's your sense? Where's the
25 differential? Is it in the thirty-two billion overlapping --

1 A. Right, but as of --

2 Q. -- or is it the ten that don't overlap?

3 A. -- but as of that morning when we didn't know what the ten
4 billion dollars was, then the risk would have been in the ten
5 billion dollars. As we -- as you now look at it, I can do the
6 calculations based on what we knew after the work that we did
7 through Friday and Saturday and Sunday and subsequently. And
8 this was done the 27th of September, right? So this is
9 sometime after, by which time we all have had greater clarity
10 on what made up the portfolio we hadn't seen, the original
11 portfolio. And I'd have been able to therefore attribute that
12 difference more accurately between the overlapping collateral
13 and the incremental collateral.

14 And therefore I think it's probably the case that there
15 was about -- and I would be doing this from memory; I would
16 suspect that it was more likely to be the case that it was two
17 billion attributable to the thirty-two billion, and one billion
18 to the ten, or thereabouts. But I can't remember exactly -- I
19 can't remember how you get to the thirteen billion dollars.
20 But I do know the -- but you have to end up with somewhere
21 around forty-six to forty-seven, including the cash.

22 Q. I'm sorry. Why do we have to end up there?

23 A. Well, from my -- from what my estimate --

24 Q. Oh, from your perspective?

25 A. -- of the cumulative was. But on the morning of the

1 transaction, then I had no idea of the value of the ten, and
2 through most of the morning of the Friday.

3 Q. Are you aware, sir, that representations were made to this
4 Court about the value of the securities that were being
5 purchased by Barclays?

6 A. When?

7 Q. On the Friday the 19th.

8 A. I've become aware of it.

9 Q. And the number that was conveyed to the Court was a number
10 of 47.4 billion. Did you provide that number?

11 A. No.

12 Q. Do you know who did?

13 A. No.

14 Q. Do you know how that number was calculated?

15 A. No.

16 Q. Going back to M777, you -- we talked about the seven
17 billion in cash, and your expectation -- and I say "your",
18 Barclays' expectation -- at closing on the 22nd was that there
19 was a set of securities, and then there were the seven billion
20 in cash --

21 A. Right.

22 Q. -- that was in an account at JPMorgan to be turned over to
23 you, correct?

24 A. There was seven billion of cash, right.

25 Q. And that's what you believed when the documents were

1 signed early, early the morning of the 22nd, correct?

2 A. Well, I wasn't part of the signing or anything, so I can't
3 really comment on that. I know that, as I've described, the
4 job that I was doing as part of this overall transaction was to
5 assess the value of securities and to determine what -- the
6 best risk management protocols that we should follow. So from
7 my point of view, I just -- I know that in my spreadsheets and
8 in my own running totals that I had, I just had seven billion
9 of cash.

10 Q. It wasn't just you, right? I mean, Mr. Romain had cash in
11 those running spreadsheets as well, correct?

12 A. I think he had cash on the spreadsheets I saw as well.

13 Q. Right, and he's the head of technical accounting at
14 Barclays, correct?

15 A. I think that's right.

16 Q. At some point that changes, right? It goes from seven
17 billion of cash receivable from JPM to some collection of
18 securities and cash --

19 A. Some collection of securities, yes.

20 Q. Right. Who made the decision to take something other than
21 cash?

22 A. I don't -- I don't know. I wasn't part of that. But I
23 don't know. And these were parallel streams, so I don't know.

24 Q. I mean, is it your understanding that that was forced upon
25 Barclays, that you were not given the option of taking cash?

1 A. On -- by whom?

2 Q. By anyone.

3 A. By JP?

4 Q. JP, LBI, the Court, someone. Did someone force you to
5 take something else than cash?

6 A. I don't -- I don't know. I don't know what was discussed
7 or negotiated.

8 Q. Well, did you discuss those issues with Mike Keegan at all
9 as to whether to take the cash or the securities?

10 A. Did I discuss anything with Mike? On the Friday? Maybe it
11 came up. Maybe it came up.

12 Q. Even after Friday. Did you discuss with Mike 'We've got
13 this seven billion dollar item that shows up as cash on these
14 documents we're producing. We're in discussions with JPM.
15 Should we take the cash? Should we take securities? Should we
16 take both'? Did you --

17 A. I can -- I know I def -- I -- yes, I discussed it. I
18 don't remember what the output was or whether it was used or
19 whether anybody particularly cared about my view. I know I'd
20 have rather had the seven billion of cash than seven, eight --
21 than four or five billion dollars of illiquid securities.

22 Q. Well, let's see what Mike's view of that was. Let's go to
23 the second page of Exhibit 777. Towards the bottom of that
24 page, there's an e-mail from Mike Keegan to you and Jasen. And
25 what Mike says to you and Jasen, third sentence down, "We

1 should do": "We should do a quick evaluation of the collateral
2 sitting in JPM to determine if it is worth more than the seven
3 billion cash and, if it is, use the Fed to reverse the Sunday
4 night deal with JPM where they were trying to take our
5 collateral on the grounds that they could not ID what it was."
6 You see that?

7 A. Right.

8 Q. And that was the view expressed by Mr. Keegan, to save the
9 collateral instead of the cash --

10 A. Right.

11 Q. -- if you determined the collateral was worth more?

12 A. Right.

13 Q. Ultimately, the position you took was that collateral was
14 worth less than seven billion, right?

15 A. I know the coll -- well, I think the collateral that was
16 capable of being delivered change quite a bit over time, if I
17 remember correctly. And the ultimate -- our assessment of the
18 value of the collateral was that it was worth less.

19 Q. And ultimately you did decide to take both collateral and
20 some cash instead of seven billion in cash from JPM, correct?

21 A. Yes. Well, that was the -- that was the settlement. I
22 suppose, yes, we agreed, yes.

23 Q. And the cash component that you agreed to take in December
24 was 1.25 billion, correct?

25 A. I know that number, yes.

1 Q. Okay. And the securities that you agreed to take you
2 valued at much less than five billion dollars, correct?

3 A. Yes.

4 Q. So the total of the cash and the securities that you
5 valued for your acquisition accounting purposes was less than
6 seven billion?

7 A. Yes.

8 Q. And you valued those securities as of December 22nd, not
9 as of September 2008, correct?

10 A. Yes. I rememb -- there was a lot of discussion about it.
11 I remember that that question was at what point should they be
12 booked as an item on the balance sheet, and so which was the
13 relevant acquisition date; was it the 22nd or was it the date
14 that we took delivery of the securities, or the date of the
15 settlement. So I think it was the date of the settlement.

16 Q. And do you recall anyone espousing the view that it should
17 be September 22nd, 2008, before the open of the markets, when
18 the deal was signed, when the asset purchase agreement was
19 signed?

20 A. I remember it being discussed, because we said what are
21 we -- you know, there was a practical consideration for the
22 team as to, well, what is the relevant price at which we
23 should -- that we should provide; are we looking at September
24 22nd or are we looking at the date of the settlement.

25 Q. And ultimately, and you know this, ultimately it was

1 valued as of December 22nd, 2008 --

2 A. I --

3 Q. -- the securities part of it?

4 A. Until this moment, I had completely forgotten about it,
5 but I think that's right.

6 Q. The equities that came over, the eight billion in
7 equities, were those part of the collateral that got
8 transferred over Thursday night into Friday?

9 A. The eight billion of equities?

10 Q. Yeah.

11 A. It came over the Thursday night, that's correct.

12 Q. That in fact made it through?

13 A. Yes.

14 Q. And you wake up Friday morning with eight billion in
15 equity securities sitting in your in-box?

16 A. Yes.

17 Q. What happened to the equity markets on the 19th, sir?

18 A. On the 19th?

19 Q. Yeah, the Friday.

20 A. I can't remember -- I don't remember Friday.

21 Q. Did they go up by as much as two, three percent?

22 A. It could have done -- it had been going down, and then it
23 may have gone up. They have a tendency to do that.

24 Q. Yeah, they had gone up and down, but on Friday the 19th,
25 do you recall whether they went up or down?

1 A. Friday the 19th. They may have gone up. I don't
2 remember.

3 Q. Ah. You know Mr. Clackson, right?

4 A. Yes.

5 Q. Okay, and what's his position?

6 A. He's the CFO of Barclays Capital.

7 Q. Right, so let's turn to Movants' Exhibit 230, which is in
8 your binder that I gave you, the witness binder.

9 A. Sorry, which one that one is?

10 Q. It's the one with your name on it, with the green cover,
11 and it says "M Binder". And M230.

12 A. 230. And you'll recall -- you'll see that this is an
13 e-mail exchange at the top of the page between Patrick Clackson
14 and Guy Lee. Do you see that?

15 A. Lee Guy.

16 Q. Lee -- I'm sorry, Lee Guy.

17 A. That's okay.

18 Q. And who is Mr. Lee Guy?

19 A. He was global head of market risk.

20 Q. And the e-mail chain begins at the bottom of the page with
21 Lee Guy, I guess, reporting on a risk position to Mr. Clackson,
22 do you see that?

23 A. Yes.

24 Q. And he says "Incidentally", at the bottom of the page, "we
25 seem to be long eight billion of equity. Will bust all DVAR

1 limits, and have to call FSA." Do you see that?

2 A. Yes.

3 Q. And DVAR is a reference to daily value at risk, correct?

4 A. Correct.

5 Q. Okay, and those are limits in terms of what your long or
6 short exposure can be on any particular day, correct?

7 A. Yes.

8 Q. And then there's an e-mail exchange that goes back and
9 forth between Mr. Clackson and Lee Guy, discussing what the
10 valuations were agreed for an earlier date. Do you see that
11 reference: "I thought valuations were agreed for an earlier
12 date"?

13 A. Okay.

14 Q. And Mr. Clackson, on the top of the page, says "Yep, so we
15 made a load." Do you see that?

16 A. Right.

17 Q. And you see that as a reference by Mr. Clackson to the
18 fact that there was a large profit earned by Barclays just on
19 that eight billion dollars of equities on the 19th of
20 September?

21 A. Right. I don't know whether we made money overall though,
22 of course.

23 Q. You may not have made money overall. We'll come to how
24 much money you made overall. But you see that as a reference
25 to the fact that you made a load on the equities on Friday?

1 A. Yeah, I actually see it, but I -- so when is that? Sunday
2 the 21st. So that's the 21st. So that's for Friday.

3 Q. Yeah.

4 A. I guess, if you've taken the closing price as of the
5 Thursday evening and then if you're reminding me that Friday
6 markets went up -- I know they went down again -- then there
7 would have been a gain on that portfolio as calculated using
8 the closing marks on those two days. But it was -- it would
9 have been impossible to crystallize.

10 Q. If you'd turn in your witness book to M200, please.

11 MR. TAMBE: And this is Movants' Trial Exhibit 200 in
12 evidence.

13 Q. You'll see it's an e-mail chain at the bottom from Marty
14 Malloy to you and Gerry LaRocca. Do you see that?

15 A. Yes.

16 Q. And who is Mr. Malloy?

17 A. He was -- I can't remember. He was -- whether he was part
18 of the prime -- I think he was part of the prime brokering
19 business.

20 Q. And he was someone who would have been involved in dealing
21 with repos and repo valuation issues --

22 A. Yes.

23 Q. -- from an operations perspective?

24 A. Yes.

25 Q. Okay. And you see him reporting totals for the Fed

1 facility collateral? Do you see that?

2 A. Yes.

3 Q. And describing collateral received for Lehman on Fed
4 facility. And he's calculating the total amounts there, do you
5 see that?

6 A. Right.

7 Q. And including seven billion dollars of repo cash.

8 A. Right.

9 Q. The total securities and cash received is shown here at
10 52.19 billion dollars, do you see that?

11 A. Right.

12 Q. And he notes that that denotes an excess collateral of
13 7.19 billion dollars. Do you see that?

14 A. Right.

15 Q. With a margin of fourteen percent?

16 A. Yes.

17 Q. And this information then gets passed along by Mr. LaRocca
18 to Mike Keegan, correct?

19 A. Right.

20 Q. And those are the values that were being ascribed to that
21 collateral by the Bank of New York at that point in time on
22 Friday the 19th, correct?

23 A. That's Friday at 11 a.m., is that?

24 Q. That's right.

25 A. Yeah. I remember that there are some peculiarities about

1 some of these numbers around this morning. They're very, very
2 volatile, because the custodian updates the equity values at
3 one time, I think, at, like, the close of business the day
4 before, but it doesn't update the bond prices until the
5 following lunchtime. And so you get a mix and match of the
6 time stamps when you do valuations at certain times, and I
7 remember that led to some inflated numbers. But I can't
8 remember which one this was. I know that -- I think that's
9 what was going on with that 52.19.

10 Q. Are you aware of any discussions that took place on Friday
11 at Barclays about relaying this 52.19 billion dollar number to
12 this Court?

13 A. I think this was a work-in-progress number Friday morning.
14 I -- so I don't know whether it would -- I mean, I know this
15 list of securities and these valuations moved significantly
16 over hours and days. So I have no idea whether somebody
17 decided to jump and grab the telephone and announce a number
18 that was changing itself.

19 Q. On the securities that ultimately came over Thursday night
20 into Friday, putting aside the seven billion in cash, you have
21 testified earlier that you set about to, as you said,
22 risk-manage those assets as soon as they came onto Barclays'
23 books, correct?

24 A. Right.

25 Q. You were aware, were you not, that the Fed had promised

1 Barclays that the Fed would finance those securities for a
2 period of at least thirty days?

3 A. Right.

4 Q. You knew that, correct?

5 A. No, but what does -- I don't understand how that relates.

6 Q. Well, I'm simply asking if you knew that.

7 A. I didn't know. It's a funding question, so I don't -- I
8 didn't know that.

9 Q. Well --

10 A. I mean, I may have come to know it, but it wasn't a major
11 issue, sir.

12 Q. Seems to me that one of your concerns and one of your
13 major concerns that week was liquidity and risk and issues like
14 that, correct?

15 A. Well --

16 Q. Right?

17 A. -- although we -- as I said, this is the danger of using
18 terms that mean different things in different places. There's
19 clearly a bank-funding -- Barclays-funding-itself -- all-banks-
20 funding-themselves issue about the time that Lehman defaulted.
21 And, you know, Bank of England, ECB, Fed were in the process of
22 putting in lifelines to support banks being able to fund
23 themselves. So that was about the liquidity for banks to
24 borrow money to fund their assets, and that had been Lehman's
25 problem that it couldn't, because it couldn't fund these

1 assets. Barclays had a balance sheet. The liquidity that I
2 was talking about was in relation to the disposal of the
3 assets, not the funding of the assets.

4 Q. Well, just hold on a second. It wasn't a question that
5 Lehman's -- it was Lehman's problem that it can fund these
6 assets? Those funding facilities that were made available to
7 broker-dealers and other financial institutions were not made
8 available to Lehman, right?

9 A. Maybe -- I suppose that may be true, actually.

10 Q. You know that to be the case, don't you?

11 A. I hadn't really given any thought to it, to be quite
12 honest with you, up until you just mentioned it. But I'm
13 trying to draw the distinction between the liquidity that
14 you're describing, i.e., can Barclays borrow money, and the
15 liquidity for the individual securities. Even if I was able to
16 fund this portfolio, I still had a major risk management
17 problem in respect of the value of the portfolio.

18 Q. And whatever risk management problems you had, a problem
19 that you did not have with respect to any of these securities
20 that you have described in the most florative (sic) terms as
21 highly illiquid, difficult to value, a problem you didn't have,
22 is you had someone willing to lend you money against those
23 securities, correct, and that being the federal government?

24 A. That's -- it was very nice, thank you very much, but it
25 was not the primary issue that I had at that point. If the

1 securities -- if we had ended up fund -- and that's the thirty
2 days. We owned many of these securities for a lot longer than
3 that. If Barclays had had to fund these assets at a much more
4 expensive rate than the Fed was presumably -- I don't even know
5 what the Fed charged for the facility. If we'd have been --
6 had to fund the assets for a month at a much higher cost, that
7 would have been a diminutive amount of risk relative to the
8 potential economic loss that we could have confronted if the
9 value of the portfolio had fallen, say, ten percent. Then we'd
10 have lost five billion dollars. That would have dwarfed the
11 financing issue for Barclays.

12 Q. Now, you said in your answer "thank you very much". Let's
13 go to M31 and see the thanks the government got.

14 A. M31. That's in the other one --

15 Q. M31 in your witness binder.

16 A. Okay, so -- I've got it.

17 Q. It's a long e-mail chain.

18 UNIDENTIFIED SPEAKER: What tab?

19 MR. TAMBE: It is tab M31.

20 Q. You'll see it's an e-mail chain. I'm not going to ask you
21 about every aspect of it, but you'll see Mr. Yang is involved
22 in several parts of this discussion.

23 A. Right.

24 Q. Take a moment to review it. I'm going to ask you a couple
25 questions about it. Let me know when you're done reviewing.

1 A. Okay.

2 Q. The e-mail I want to draw your attention to is the e-mail
3 on -- it should be the third page, but it's the e-mail from
4 Beatrice Montaudy to Jasen Yang and Mark Ruddick (ph.).

5 A. Right.

6 Q. Do you see that?

7 A. Yes.

8 Q. Okay.

9 MR. TAMBE: And if you could highlight the first two
10 paragraphs of that e-mail, please.

11 Q. And the topic is "Long Island Asset Booking". Do you see
12 that?

13 A. Right.

14 Q. And Long Island is a reference to the Lehman transaction,
15 correct?

16 A. Correct.

17 Q. And this e-mail chain begins with discussions about the
18 tax implications for U.S. tax purposes of how the assets would
19 be booked; you see that?

20 A. Right.

21 Q. Okay. And Ms. Montaudy starts her e-mail with the
22 following observation: "The context of this question was that
23 during the asset purchase price negotiations, it was essential
24 that the valuation calculation" -- "it was essential to the
25 valuation calculation that the discount between the value of

1 the assets acquired and the purchase price", capitalized, "NOT
2 be subject to the forty-six percent marginal U.S. tax rate
3 applicable to BCI." Do you see that?

4 A. Right.

5 Q. And BCI is the regulated broker-dealer entity of Barclays,
6 correct?

7 A. Correct.

8 Q. Instead -- and the discussion goes on. There's a
9 discussion about allocating some of those assets to other
10 entities that would not be subject to the forty-six percent
11 marginal tax rate, correct?

12 A. Right.

13 Q. And it is your understanding, is it not, sir, that
14 ultimately when Barclays accounted for this transaction, the
15 gain was not reported in BCI; it was reported in other
16 entities, correct?

17 A. I believe that to be the case, but I wasn't involved in
18 the tax discussions.

19 Q. Was there any discussion with the Fed about how you'd be
20 accounting for this and what taxes you'd be paying on gains?

21 A. I have no idea.

22 MR. TAMBE: This is a good time, Your Honor, just to
23 break for the afternoon.

24 THE COURT: I'm --

25 MR. TAMBE: I'll move to another topic after this.

1 THE COURT: I'm pleased to take a break for fifteen
2 minutes. But let me ask you, just for planning purposes, about
3 how much longer you expect to be on this cross.

4 MR. TAMBE: I would say forty-five minutes at the
5 most.

6 THE COURT: Okay. We'll resume at 3:45.

7 (Recess from 3:31 p.m. until 3:50 p.m.)

8 THE COURT: Be seated, please. Please proceed.

9 RESUME CROSS-EXAMINATION

10 BY MR. TAMBE:

11 Q. Mr. King, if we could please turn back to Movants' 31;
12 that's, I believe, the exhibit you were discussing before the
13 break.

14 A. All right. Yes.

15 Q. And in the cover e-mail from Mr. Romain to several folks,
16 including Jasen Yang --

17 MR. TAMBE: If we could just highlight that first
18 e-mail, please.

19 Q. -- and the first paragraph notes "It's essential there is
20 a coordinated approach on how assets are brought onto Barclays'
21 balance sheet; which entities acquire which assets; how, where
22 goodwill recognized; how ring-fenced for acquisition
23 accounting, et cetera." Do you see that?

24 A. Yes.

25 Q. And the various hats that you were playing -- you played a

1 role in that coordinated approach, correct?

2 A. Of which entities -- which coordinated approach? The --
3 of which entities to book the assets?

4 Q. How the assets were brought onto the balance sheet.

5 A. And also where on the balance sheet they were brought on,
6 because ultimately we had to open books in which we were able
7 to book the assets. So, yes.

8 Q. So you played a role in that part of this coordinated
9 approach?

10 A. Yes.

11 Q. When it goes for -- when it goes to how and where negative
12 goodwill is recognized, is that something you were involved in?

13 A. No. It would have been the decisions that Finance were
14 making, would have influenced where the assets would have been
15 held, and that would have affected where we would have opened
16 the books and out of which entities we would have -- and out of
17 which entities we would have managed the assets; but not the
18 input decision.

19 Q. And you recognize the reference to negative goodwill? You
20 understand that concept, correct?

21 A. Yes.

22 Q. And to the extent --

23 A. Actually, sorry, can I just clarify? I understand that in
24 the context of this transact -- it was not something that I
25 know otherwise.

1 Q. And that's a fair point. So in the context of this
2 transaction, you came to learn what negative goodwill meant?

3 A. I've heard the expression, yes.

4 Q. And the work that you were doing, the valuation work that
5 you were doing, had an impact on the calculation of negative
6 goodwill, correct?

7 A. Yes.

8 Q. To the extent you were ascribing a lower value to assets
9 than otherwise, that reduces the amount of negative goodwill?

10 A. If the amount that we attributed to the estimated
11 realizable value of the assets went down, then the negative
12 goodwill would go down.

13 Q. Was there any downside limit on how low a value you could
14 ascribe to an asset?

15 A. No. That would have been a peculiar thing to discuss. So
16 I don't remember that.

17 Q. I guess, at one level, if you ascribed a value of less
18 than forty-five billion to this pool of assets, Barclays would
19 have taken a loss because it had financed the purchase of those
20 assets with an outlay of forty-five billion dollars, correct?

21 A. I'd have to think through all the other attributes of the
22 transaction, because -- I mean, although I wasn't involved in
23 it, I know it involved other things. But at least, you know,
24 if I had told the firm -- well, what is definitely true is, if
25 I had told the firm I really think that we can realize forty-

1 six billion dollars or forty-six and a half billion dollars or
2 forty-seven billion dollars on this collateral pool and then we
3 had only realized forty-four, then that would have been a loss
4 to the firm, relative to their expectation.

5 Q. Did anyone discuss with you, not asset by asset but
6 collectively, that there was a downside floor collectively that
7 could be ascribed to the value of these assets at forty-five
8 billion?

9 A. No.

10 Q. Do you know, as you sit here, sir, what is the collective
11 value ascribed by Barclays to this pool of assets, the repo
12 assets?

13 A. When?

14 Q. Now.

15 A. I don't think they exist anymore.

16 Q. The last statement made by Barclays as to the value of the
17 assets it acquired from Lehman, what is that number, sir, if
18 you know it?

19 A. I'm not sure, sorry. I'm not sure. The assets -- most of
20 the assets were liquidated --

21 Q. We're talking -- I'm sorry.

22 A. -- during 2007.

23 Q. My fault. We're talking past each other. At some point
24 in time, after a lot of effort and lots of people working on
25 it, Barclays pronounced the assets it acquired as part of the

1 repo collateral were worth X dollars when acquired, correct?

2 A. Right.

3 Q. Okay. And I said "when acquired" because Barclays valued
4 those assets at various points in time, not just at the closing
5 of the transaction, correct?

6 A. Right.

7 Q. Okay. That number -- when Barclays ascribed a number to
8 those assets, what was that number, if you know?

9 A. If I can remember back to it -- so would this -- this
10 would have included -- I don't know whether there had been
11 revisions through 2 -- you know, I left the firm in 2009, so I
12 don't know whether there's been any revisions or anything. But
13 in early 2009 when the acquisition balance sheet was being put
14 together, I seem to remember that the value of the assets,
15 including the clearing box assets, was, I think, about forty --
16 including the clearing box assets, must have been about forty-
17 seven billion dollars.

18 Q. So, excluding clearance box assets, focusing on the repo
19 assets, about 45.5?

20 A. It would have been something -- is it forty-five or forty-
21 seven? Yeah, something like that, yes.

22 Q. Now, the role that you played within this coordinated
23 approach of brining on the assets onto Barclays' balance
24 sheet -- if you could turn to 792, M792, in your binder. Do
25 you -- are you there, sir?

1 A. 792, yes.

2 Q. Do you recognize that at the top of the e-mail chain as an
3 e-mail written to you -- by you to Mr. Yang and others?

4 A. Sorry, 792?

5 Q. 792.

6 A. Sorry. Yes.

7 Q. It's an e-mail from you to Mr. Yang and others. The Re:
8 line reads "Prices and Risks", do you see that?

9 A. Yes.

10 Q. You note in your e-mail --

11 MR. TAMBE: We offer 792 in evidence, Your Honor.

12 MR. SCHILLER: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (Movants' Exhibit M792, e-mail from Mr. King to Mr. Yang re
15 prices and risks, was hereby received into evidence as of this
16 date.)

17 Q. You note in your e-mail to Mr. Yang, "At this point, the
18 relevant desks can have information. Would like to avoid all
19 desks seeing overall position." Do you see that?

20 A. Yes.

21 Q. Why were you concerned about the other desks seeing the
22 overall position, sir?

23 A. I thought it -- I remember thinking through it at the
24 time. And this is on the Saturday, so we were still in the
25 process of deciding the best way to realize the value of the

1 portfolio and risk-manage the portfolio on a go-forward basis.
2 The -- you know, if traders -- traders use information all of
3 the time in their normal job, and I thought that it was
4 appropriate that if we had a trader, which I seem to remember
5 was what this was, if we had a trader of, say, publicly traded
6 equities, it was probably better that they did not have a full
7 inventory list for the entirety of the assets being acquired by
8 Barclays. It just seemed to me to be prudent information
9 management.

10 Q. I'm just trying to understand that answer, because this
11 morning we talked about the fact that it was relevant to you in
12 valuing these securities to know that you had a particularly
13 large piece of a particular offering. Are you suggesting you
14 didn't want that information to be shared by -- with other
15 traders?

16 A. On, no, slightly different. I don't mind a trader that I
17 was going to ask to help me in maximizing the realizable value
18 of a security, whether that be disposal or analysis, or
19 whatever it was. I don't mind him or her knowing about all of
20 that position. I don't even necessarily mind them knowing --
21 let's say it was convertibles. I don't mind the convertibles
22 desk knowing all about all of the convertibles. That's very
23 useful to me. What I didn't think was necessarily appropriate
24 was that the convertibles desk knows that we are long, you
25 know, ten billion dollars of agency debentures. That didn't

1 seem to me to be a very sensible thing, because I don't know
2 how it's going to influence their behavior or whether that
3 information would find its way into the market and then
4 negatively affect my ability to trade those securities. So I
5 was trying not to have everybody know everything.

6 Q. And were you concerned at all that by sharing broader
7 portfolio information with the traders that they may be forced
8 to revalue positions that they already had on their books?

9 A. I hadn't thought about it that way. I'm not sure that
10 would have -- I'm not even sure that would have followed as a
11 necessary consequence.

12 Q. Let's turn to Exhibit 782, M782, in your binder.

13 A. M782?

14 Q. 782. And you'll see the top of this document it's an
15 e-mail from you to Jonathan Hughes; there's a redaction at the
16 top. But what you're forwarding is an e-mail exchange with a
17 number of people involved in it. Do you see that?

18 A. Right.

19 Q. And there's a discussion, on that first page of the
20 exhibit, about whether or not the bookings are going to be
21 Trace reportable.

22 A. Right.

23 Q. Do you see that?

24 A. Yes.

25 Q. And what is Trace, sir?

1 A. Trace is a reporting service that shows where cash bonds
2 trade when two parties trade.

3 Q. And so the cash bon -- and so that's publicly
4 disseminated?

5 A. Yes.

6 Q. And available to market participants, correct?

7 A. Yes. Absolutely.

8 Q. And used by market participants, including Barclays, to
9 value similar positions on their own books, correct?

10 A. Well, it's one of the things that product control would
11 have used as evidence for where securities should be marked. I
12 don't actually know -- I don't believe that Trace is
13 necessarily used as accrued input for marking securities. I
14 know we had our own firm use it as an interesting indicator,
15 but it's not the only thing that factors in.

16 Q. Well, it's an interesting indicator because what Trace is
17 reporting is actual transactions that have occurred, correct?

18 A. Right. And this would have been very weird if this had
19 all been pushed through Trace.

20 Q. Well, you didn't want it to be pushed through Trace,
21 correct?

22 A. No, I hadn't thought about it, actually, up until this
23 point, but then when -- I remember, when we realized that there
24 was a potential for it to be reported through Trace, we
25 realized that was a really stupid thing.

1 Q. Okay. And, in fact, you suppressed Trace reporting,
2 correct?

3 A. We tried to, yeah. I don't know whether we succeeded; I
4 think we did. It was very important because otherwise the
5 entire Street would have known exactly what line items we had
6 acquired from Lehman, which would have made it very difficult
7 to trade on a go-forward basis, because now all of our
8 counterparties would have known exactly what we owned, which is
9 the same reason that I didn't want all traders to know all
10 information about all positions. It would have put us -- we
11 were -- after all, we just were getting along fifty billion --
12 well, forty-six, forty-eight, forty-seven billion dollars of
13 securities. I really didn't want the Street to know exactly
14 what we had acquired, and Trace would have been a way that they
15 would have been able to see that.

16 Q. Well, what you acquired was a matter of public record,
17 right? You filed the schedules with the Court as to what you
18 acquired? There were disclosures made in court about what you
19 were --

20 A. I guess that's true, but, I mean, there is a difference
21 between market participants, traders, the sort of people that
22 work for me sitting at their desk and look -- and running a
23 Trace report, and going to the Court and getting Schedule A,
24 sifting through it, identifying the corporate securities. And
25 that would have been strange. And I -- yes, I think that would

1 have been much harder.

2 Q. And the other thing that Trace would have offered is the
3 price at which you transacted, which is something that the
4 court schedules didn't provide any member of the public,
5 correct?

6 A. I guess that's true, yeah, but I don't know -- I'm not
7 even sure we would have known at this point. And I can't
8 remember whether we discussed this. You know, in many
9 respects, the items that we were bringing onto the balance
10 sheet, after all, were part of an overall business transaction
11 and were not -- you know, were not individual trade line items.
12 We were still estimating portfolio valuations. Here we would
13 have now instantly jumped to reporting individual line item
14 valuations. So there would have been a very large number of
15 sizes and individual line-item information for absolutely every
16 instrument in the portfolio, and I think that would have been a
17 very peculiar thing.

18 MR. TAMBE: If I have not already done so, Your Honor,
19 I offer M782 in evidence.

20 MR. SCHILLER: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (Movants' Trial Exhibit M782, e-mail from Mr. King to Jonathan
23 Hughes re Trace reporting, was hereby received into evidence as
24 of this date.)

25 Q. Once the assets are taken on board and through the

1 processes you talked about earlier, some of them end up with
2 different trading desks --

3 A. Right.

4 Q. Right. -- as you said, to be risk-managed? Right. Some
5 of them remain with one of your desks?

6 A. Yes.

7 Q. Right. Is it safe to assume that it's the mortgage-backed
8 securities and the more illiquid assets that stayed with your
9 desk?

10 A. It was the -- well, there were two levels of approach.
11 The mortgage and mortgage-backed securities stayed with us. I
12 also kept the equities and agencies' positions because they
13 were very large under -- in our books. And then I used
14 resources from within the fixed -- within the agency trading
15 and equity trading business to help me risk-manage that
16 position and the corporate position -- the corporate bond
17 position, particularly the part that was part of the JP
18 settlement we kept within our group, the commercial mortgages,
19 the munis. There was a 900 million dollar portfolio of munis
20 that, I think, Barclays finished realizing this year actually
21 fairly recently.

22 And so there were a handful of asset types that we kept.
23 And then the most obvious and most liquid ones we quickly, as
24 quickly as practical, moved through the relevant trading desks
25 and out into the market, and those were the agency CMOs and the

1 treasuries, U.S. mortgage securities -- agency mortgage
2 securities and treasuries.

3 Q. It's quite a handful. I just want to make sure I know
4 what it is that you kept and managed through your desk. So let
5 me just see; agencies?

6 A. No, I'm trying to remember. It was agencies, but not
7 agency CMOs. It was -- and, well, I suppose I should just
8 check out what time do you mean. Within days or within weeks?

9 Q. Within days, initially.

10 A. I think, within days -- within days, I think we had
11 everything. Within weeks, we had started to work out what the
12 best -- or the optimal thing to do was with each of the asset
13 types, whether it was we'll manage them, we'll -- we will
14 manage them with support from other desks, or we will liquidate
15 them directly, or liquidate them through other desks. Those
16 were the set of activities. I know we didn't keep the
17 treasuries and the agency CMOs on our desk. We decided the
18 best thing to do was to push those through our own fixed income
19 division.

20 Q. Okay, so let me go back again, then. Agencies other than
21 CMO agencies you kept?

22 A. Yes.

23 Q. You kept mortgage-backed securities?

24 A. Yes.

25 Q. You kept all of the munis, or some of the munis?

1 A. I think all of the munis.

2 Q. Some of the corporate bonds, right?

3 A. The corporate bonds, yes.

4 Q. All of the corporate bonds?

5 A. We transferred a small portfolio of the convertible bonds,
6 convertible corporate bonds, to the London desk, and I think we
7 ended up bringing them back, because they immediately got
8 themselves into trouble and lost money on them. The corporate
9 bonds were kept, yes.

10 Q. Did you keep the Giants Stadium auction-rate securities
11 bonds?

12 A. Yes.

13 Q. What bucket do you put those in? Mortgage-backed?

14 A. You know, I can't remember which one it came in. It came
15 in -- it was funny because the Giants Stadium bond was what was
16 called an auction-rate security. And I can't remember now
17 whether the auction-rate securities were included in corporates
18 or in the mortgage-backed securities. I think they were
19 included in the corporates. We then viewed -- but you can see
20 that something like Giants Stadium is an extremely structured
21 bond. So for my purposes --

22 Q. I have a question.

23 A. -- I moved them into mortgages.

24 Q. So, I mean, what bucket did you put it in?

25 A. I think they were in Lehman's corporate bucket. I think I

1 put them in our mortgage bucket.

2 Q. Okay. And how about Pine? You've talked about Pine in
3 the morning as a single CUSIP with a billion face value,
4 correct?

5 A. Yeah.

6 Q. Did you keep that one too?

7 A. That was -- where did we describe that? I had another
8 category that I included on our desk for the securities that
9 really were completely untradeable, like Pine, Giants Stadium
10 and some of the insurance Triple-X bonds.

11 Q. And just so I understand, sort of, some of the P&L issues
12 that arise when you keep some of these assets with your desk,
13 you take them on, you onboard them, a value is ascribed to them
14 as part of the accounting process that then followed?

15 A. Right.

16 Q. Months later, that value is either validated or affirmed
17 or certified, but that value is confirmed as of the acquisition
18 date, correct?

19 A. Right.

20 Q. While all that's going on in those months that follow
21 closing, things are happening with these securities, correct?

22 A. Correct.

23 Q. So if you take Giants Stadium as an example, right, and
24 let's use round numbers, hypothetical numbers, you take in a
25 Giants Stadium bond and you say It's a thousand dollar bound, I

1 value it at a hundred.

2 A. Right.

3 Q. For acquisition balance sheet purposes, I'm going to value
4 it at a hundred. If three months later you write up the value
5 of that bond to a thousand --

6 A. Right.

7 Q. -- that is seen as a profit for your desk, correct?

8 A. Well, again, you're oversimplifying desk. My desk
9 consisted of desks and it consisted of books run by desks.
10 There was specific --

11 Q. I'm not so focused on the desks here. I'm focused on the
12 900 dollar profit in this example.

13 A. Well, I --

14 Q. There is a profit?

15 A. Well, I'm -- yeah, but I'm trying to explain. When you
16 say "my desk", right, there was -- there were what we called
17 acquisition books, and those securities were associated with
18 those books. So it in no way -- we never transferred those
19 securities from those books into the proprietary trading books.
20 So that P&L would have been realized against books that were
21 well-associated with the Lehman transaction, and it would have
22 been -- resulted in a profit for the firm, but not quite the
23 same type of profit as, say, a profit on my trading desk.

24 Q. So there's a profit for the firm and while the various
25 desks within the firm wakes up to a profit as a result of our

1 example, right?

2 A. Well, as I say, I mean, I was -- you know, we managed --
3 we were managing forty-five-plus billion dollars of assets
4 acquired from Lehman, and many billions of dollars of assets
5 from -- that had been acquired from other desks from within
6 Barclays as part of this, you know, call it workout or runoff
7 or whatever process. That's very different from the other
8 piece of business which I ran, which was the proprietary
9 trading business.

10 There were gains and -- very substantial gains and losses
11 in those assets acquired from Lehman and that were on the
12 Barclays balance sheet. Sometimes they were gains and
13 sometimes they were losses. They weren't commingled in any
14 way.

15 Q. Question's a really simple one. Using my example, if you
16 took a thousand dollar bond, you valued it at a hundred. And
17 later on, subsequent to acquisition, you wrote up the value of
18 that bond to a thousand. Somewhere within the bowels of
19 Barclays, there would be a 900 dollar gain as a result of that
20 set of facts, correct?

21 A. Yes, there would be a gain associated with those facts.

22 Q. So now let's use some real numbers. When the Giants
23 Stadium bonds were taken on and for acquisition balance sheet
24 purposes, you ascribed a value, you, Barclays, ascribed a
25 value, of roughly fifty-eight, fifty-nine million dollars to

1 those bonds?

2 A. Right.

3 Q. Okay. And by December 31st, you had written up the value
4 of that bond -- those bonds to 408 million dollars, correct?

5 A. I think that's true, yes.

6 Q. That's a 350 million dollar gain just with respect to
7 those four Giants Stadium bonds, correct?

8 A. Well, yes, to that group of securities.

9 Q. And when you valued those bonds for acquisition balance
10 sheet purposes, what data did you use? At whose values did you
11 value them? Your own?

12 A. No, I think they were part of the auction rates. There
13 was a group of securities that were the auction-rate securities
14 that were backed by many different collateral types; the Giants
15 Stadium bond, as they came to be known by, as well were one of
16 those sets of bonds. There were many others as well. Some of
17 them realized a gain. Many of them realized a loss. There was
18 very little that we could do with them.

19 Q. Do you have my question in mind? Whose value did you
20 value them at? Your own?

21 A. Well, I can't quite remember. I seem to remember that
22 what we did with the auction-rate securities at the time was
23 come up with an approximate valuation that was something less
24 in aggregate than the custodial marks. But I can't remember
25 exactly.

1 Q. With the Giants Stadium bonds, you're kind of guessing at
2 that, aren't you?

3 A. Well, I sort of vaguely remember that, but I can't
4 remember it exactly. I mean, it is one bond, after all. It's
5 a, you know -- you know, I know it seems like a very large
6 number in isolation, but it's fifty-eight million dollars of
7 bonds out of a fifty billion dollar portfolio. So it was a --
8 it is a big number, but it is fifty-eight -- it is, you know,
9 less than one percent of the portfolio.

10 Q. Actually, you had it marked 58 for acquisition purposes,
11 but by the end of the year you had it marked at 400 million?

12 A. Yes, that's right.

13 Q. Okay. So you could call it a 58 million dollar bond; I'll
14 call it the 408 million dollar bond.

15 A. Right, but stuff happened to that bond in between, very
16 significant stuff that we did, right? Because, don't forget,
17 it was -- these auction-rate bonds, they had a -- they were
18 very peculiar; they had a fixing rate that needed to be reset,
19 and it wasn't for a while that we realized that we could cause
20 those bonds to be reset at a yield that was commensurate with a
21 much higher price. And the idea behind it was -- and this
22 worked with -- this security and other things ended up being
23 worth a lot less; so, for example, the warrants that I
24 described earlier were 300 million dollars that turned out to
25 be worth zero. So there were 300 million dollar swings in the

1 other direction as well. So I say they are big numbers in --
2 separately, but in aggregate this was part of a very large
3 problem.

4 Those auction-rate securities needed to be reset at a
5 market-clearing rate, which I remember we thought was about
6 twenty percent at the time we acquired them. They were
7 clearing at two or three or four, or something. And that very
8 much changed the characteristics of them as they started to
9 clear at twenty. Ultimately, and I mentioned this in my
10 testimony earlier, that was an example of a bond that was
11 actually mostly refinanced and called by the issuer.

12 Q. Well, you marked it up to par value well before it was
13 refinanced and repurchased at par by the issuer, right?

14 A. Right, because it was clearing at a twenty percent yield,
15 whereas when we acquired it, it was clearing at a three percent
16 yield.

17 Q. Right. And it began clearing at that yield, if I
18 understand your testimony, because of steps that you took
19 subsequent to acquiring that bond --

20 A. Right.

21 Q. -- rights that you had as the holder of that bond,
22 correct?

23 A. Right. I mean, we -- there were many bonds in that
24 portfolio and we tried to maximize the value of it.

25 Q. Let's talk about the Pine CLO, and you said this was not a

1 traded or tradable security. You described it in different
2 terms as an exotic security, correct?

3 A. I guess, theoretically it's -- it's a security, so,
4 theoretically it's tradable. But in practice it was really a
5 financing instrument.

6 Q. It was a series of loans that had been made to Lehman --
7 by Lehman to various borrowers --

8 A. Yes.

9 Q. -- and those had been put into a securitization structure,
10 collateralized loan obligation, right?

11 A. Yes.

12 Q. Okay. And the piece that was at issue, that was
13 transferred from Lehman to Barclays, had a face value of about
14 a billion, right?

15 A. Yes.

16 Q. Okay. Single CUSIP, right? And that bond, that Pine CLO
17 bond, came with all of the rights provided to the holder of
18 that bond under the securitization structure, correct?

19 A. Yes.

20 Q. Okay. And with respect to that particular bond, BoNY, the
21 Bank of New York, valued it at 914 million?

22 A. Yes.

23 Q. JPMorgan valued it at 919 million, right?

24 A. Yes.

25 Q. And Barclays, for acquisition purposes, valued it at 428

1 million --

2 A. Right.

3 Q. -- right? By the end of the year, that warrant had been
4 revalued at 781 million dollars by Barclays, correct?

5 A. Right.

6 Q. So looking at that CUSIP and that set of issues, that's a
7 350 million dollar gain on that single CUSIP by Barclays,
8 correct?

9 A. Yes. Again, actions taken -- and also I still don't
10 think, as far as I know, that they have monetized that
11 position. But, again, it was -- you know, I don't know where
12 the custodian would have got the 900 million dollars from. And
13 there were steps taken that changed the security after
14 acquisition. That was a very difficult -- very, very difficult
15 position.

16 Q. Did you call up the custodian and ask them how they valued
17 these securities?

18 A. Did we ask them how they'd approached that one? I don't
19 think we asked them how they approached that one. I remember
20 most of it was that they took a maturity -- for many of the
21 securities, they had taken a -- you know, a legal final
22 maturity and an estimated yield and then discounted the coupon
23 by the estimated yield. Of course that security wasn't like
24 that, because it was backed by collateral that itself was
25 trading at a very significant discount, and it had cash that

1 was potentially exposed to being lent to those same corporates.
2 And so that was why it was different. In fact, later on we
3 even thought a good idea was to sell it back to the Lehman
4 estate, and Lehman -- the Lehman estate would offer us -- would
5 not offer us anywhere near where we were saying it was worth.

6 Q. Well, you were trying to sell it two years after the fact,
7 correct?

8 A. No, this was -- that's -- no, six to nine month -- this
9 was in the following year, you know, when --

10 Q. When a lot of other things had also happened?

11 A. Sorry?

12 Q. When a lot of other things had also happened to the
13 underlying collateral, correct?

14 A. Well, some of the collateral had improved, actually. I
15 mean, don't forget that what was happening during that
16 period -- I think by the time -- there was some collateral that
17 had improved. The requirement to relend the cash that had been
18 trapped in the security had been eliminated, and we thought
19 that therefore it was a more valuable security, following the
20 efforts that we had taken, but we thought that it was a good
21 idea to maybe ask the Lehman estate if they were interested in
22 buying it back. But they would -- were only willing to -- I
23 can't remember what they were willing to pay, but they were
24 willing to pay considerably less than we had estimated its
25 value at.

1 Q. The agencies, the non-CMO (sic) agencies, that are
2 somewhere in our ambit, maybe not on your desk but one of the
3 desks
4 that's --

5 A. Right.

6 Q. -- around you --

7 A. Yes.

8 Q. -- there was a liquidity discount applied to the valuation
9 of those agency securities, correct?

10 A. By whom?

11 Q. By PCG, by Barclays.

12 A. There was a -- well, I mean, if the valua -- do you mean
13 the valuation adjustment, or --

14 Q. Yes, the valuation adjustment.

15 A. Right, I -- you know, there's a valuation adjustment; I
16 know that inclu -- incorporates, you know, bid offer provisions
17 and various other things that they had taken into account.

18 Q. And is it your understanding -- and if you know tell me;
19 was this adjustment applied on a percentage basis across all
20 non-CMO agencies?

21 A. I don't actually remem -- I either don't remember or don't
22 know -- I think don't know -- how product control did it. I
23 know when I had done it originally, because the positions were
24 extremely long-dated and there was, you know -- I remember
25 talking to my agency trader who just told me 'There's

1 absolutely no bid for this paper, Stephen; absolutely no bid.'
2 And I said, Well, there must be surely; it's almost government
3 collateral. You know, There's no bid for it. And so what we
4 tried to do was to estimate, you know, in one workout what the
5 best way to crystallize it was. I think it took about nine
6 months. It was a position that consumed a tremendous amount of
7 risk capital for the firm. But we still attempted to risk-
8 manage it and liquidate it in a controlled fashion by fi -- and
9 the reason why we used -- there's a good example why we used
10 the trading desk: because they had access to customers. And
11 there was really no -- there was no liquidity in the Street for
12 these bonds. So we sold it steadily and slowly into the
13 customer base.

14 Q. This extended effort that you went through would not apply
15 to C -- to agency non-CMO securities that were maturing the
16 week of September 22nd, would it?

17 A. Sorry, so would -- could you ask me again?

18 Q. Would you have applied this kind of an involved procedure
19 not for the long-dated ones but for ones that were maturing the
20 week of the closing?

21 A. I think the ones the week of the closing may well have --
22 well, they should have just paid.

23 Q. And they did pay?

24 A. Yeah, I assume that's the case.

25 Q. And you did apply the valuation adjustment even to those?

1 Were you aware of that?

2 A. Well, maybe -- trust me, the valuation adjustments or the
3 estimates that I had used for that agency portfolio were
4 woefully inadequate, and we lost a considerable amount of money
5 on that block of securities, I mean, in hundreds of millions of
6 dollars, because I in no way had adequately contemplated the
7 illiquidity of those instruments.

8 Q. Now, when you apply a valuation adjustment to the
9 nonagency CMOs, that affects the price you're going to apply to
10 that security, correct? That's what the valuation adjustment
11 is: It's an adjustment to the price?

12 A. Well, the valuation adjustment was a peculiar concept that
13 came up as a result of needing to reconcile independent third-
14 party marks with something that was, you know, adequately close
15 to what I was estimating and my team was estimating and other
16 groups were estimating were the realizable values. And so
17 there was an effort to seek to do that.

18 In the early days of the balance sheet where there is a
19 valuation adjustment, you can actually see that it is
20 explicitly calculated as the difference between the BONY marks
21 and what they called the PMTG marks. It's just a difference.
22 Now, later on that became a more involved process as the
23 appropriate independent processes were put in place to
24 determine a valuation adjustment, but at that -- early on, it
25 was as simple as that difference.

1 Q. I think my question was, "When you talk about valuation
2 adjustment, that's an adjustment to the price of the security,
3 correct?"

4 A. Well, it's a -- right, but you have to define what you
5 mean by "price", and I'm saying that it was an adjustment that
6 was the result of deducting from the BoNY marks, my estimated
7 marks. So it was calculated.

8 Q. And when you do that with debt securities, one of the
9 impacts that has is, when you ascribe a price to a debt
10 security, there's an inverse proportionality to the interest
11 rate, the yield, for that security, correct?

12 A. I don't really think so, because the -- you know, as far
13 as I'm concerned, my estimate of the valuation of the portfolio
14 was going to be what we were going to realize. So it would be
15 zero yield to my estimate. There was no way to ever
16 crystallize the BoNY marks.

17 Q. So just so I understand it, your value is your value; you
18 didn't care if the value you ascribed to a particular agency
19 security implied a yield in the hundreds of percent per annum?

20 A. Right --

21 Q. It did -- it was immaterial to you?

22 A. Well, that -- but that's not what the valuation adjustment
23 was. The securities at my valuations or -- there's a set of
24 contractual cash flows and there's a set of loss-adjusted
25 contractual cash flows that need to be discounted in some way

1 to come up with a price, whether that's my price or that's
2 BoNY's price. The valuation adjustment just happens to be the
3 difference between those prices. If I believe that my price is
4 right and I'm willing to sell at my price, I will earn zero
5 yield over where I bought the security.

6 MR. TAMBE: If I could just consult my notes, Your
7 Honor?

8 THE COURT: Sure.

9 (Pause)

10 MR. TAMBE: No further questions, Your Honor. Thank
11 you, Mr. King.

12 THE COURT: Does anyone else have questions on the
13 movants' team?

14 MR. MAGUIRE: No questions, Your Honor.

15 MR. TECCE: I do, Your Honor, fifteen or twenty
16 months' worth. Your Honor, I do have a handful of exhibits
17 that I would like to show the witness, and I have a binder, if
18 I may. I'm sorry. I know you have three binders already.
19 This will be your fourth.

20 THE COURT: It's true. I have three binders already
21 for this witness.

22 MR. TECCE: You do.

23 THE COURT: Now I'll have four.

24 CROSS-EXAMINATION

25 BY MR. TECCE:

1 Q. Good afternoon --

2 THE COURT: Plus I have Exhibit 716. So the crowded
3 space in the witness stand is becoming more crowded.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 Q. Good afternoon, Mr. King. Mr. King, my name is James
7 Tecce. I am an attorney that represents the official committee
8 of unsecured creditors in these cases. I know you've had a
9 long afternoon and I will be brief here, I promise.

10 Earlier today, Mr. King, Mr. Schiller asked you if, after
11 the December 2008 settlement with JPM, you were part of an
12 effort to provide information to the creditors' committee
13 concerning the sale transaction. Do you remember that?

14 A. Yes, I do.

15 Q. Okay. And in connection with that effort, among other
16 things, you attended a meeting in February of 2009 with
17 representatives of the creditors' committee, correct?

18 A. Yes.

19 Q. And you also -- you or a team acting at your direction
20 assumed documents in response to requests provided by the
21 committee to Barclays, is that correct?

22 A. Yes.

23 MR. TECCE: Can we pull up Movants' 371, please?

24 Q. Sir, in the binder which I've just given you, you'll see
25 M371, which is a tab. And -- are you at the document, sir?

1 A. Yes.

2 Q. Okay. Have you ever seen this document before?

3 A. I don't think so.

4 Q. Well, this is an e-mail; it's dated Friday, December 26,
5 2008, correct?

6 A. Yes.

7 Q. And you'll see it's from me, James Tecce. And in the "To"
8 line, you'll see a Lindsee Granfield. Do you know who Lindsee
9 Granfield is?

10 A. I don't think so, no.

11 Q. Okay. Do you know who jschiller@bsfllp.com would be?

12 A. Yes.

13 Q. Okay. That would be Jonathan Schiller, correct?

14 A. Yes, that would.

15 Q. Okay. And there's also shirshon@proskauer.com. Do you
16 know who Shelly Hirshon is?

17 A. I don't think so, no.

18 Q. So --

19 A. Hope I haven't offended anybody in the courtroom. I said
20 I hope I haven't offended anybody --

21 Q. No. Okay.

22 A. -- that I'm supposed to know.

23 Q. And you'll see the first sentence of this paragraph that's
24 in this e-mail is: "Attached please find the letter setting
25 forth the Committee's current information requests relating to

1 the Transaction. These are largely the same requests we sent
2 through Hal Novikoff over last weekend, albeit with some minor
3 changes, including changes that attempt to address Barclays'
4 concerns over scope, which we discussed on Monday prior to the
5 hearing." You see that text?

6 A. Right, yes.

7 Q. And then attached on the next page, you'll see an actual
8 letter, correct?

9 A. Yes.

10 Q. And again this is a letter sent by me to -- again you'll
11 see Ms. Granfield's name and Mr. Schiller's name, correct?

12 A. Yes.

13 Q. And this letter requests -- you'll see in the second
14 sentence of the first paragraph beginning "In connection
15 with" -- there's a series of defined terms, obviously, in the
16 beginning where we announce who we are in the letter. And it
17 says, "In connection with the Committee's review of the Sale
18 Transaction, the Committee requests that each Barclays and the
19 Depository Trust Corporation are provided with the following
20 documents". You see that language?

21 A. Yes.

22 Q. And then in (a) you'll see it starts "The flow of funds
23 and sources and uses memoranda".

24 A. Right.

25 Q. And if you turn to the next page, you'll see a larger

1 paragraph (b), and this says "With respect to all securities
2 transferred to Barclays in connection with the Sale Transaction
3 ("Transferred Securities"), three schedules of mark-to-market
4 valuations on a security-by-security basis with supporting
5 documentation (the "Valuations") determined or prepared on or
6 about September 16th, 2008 (i.e., in connection with the
7 Purchase Agreement), September 19th, 2008 (i.e., in connection
8 with the Sale Hearing), and September 22nd, 2008 (i.e., in
9 connection with the Closing) provided that the valuations were
10 either communicated by Barclays to LBHI, LBI or the Committee;
11 (y) considered by Barclays in preparing the valuations
12 communicated to LBHI, LBI or the Committee; or (z) determined
13 or prepared by employees of LBHI or LBI that were employed by
14 Barclays at any time after the Sale Transaction Closing. For
15 purposes of this request, Transferred Securities includes
16 securities collateralizing liabilities that were extinguished
17 and hence were not visibly transferred."

18 I realize that's a long paragraph, sir, but before today,
19 have you ever seen that paragraph or this letter for that
20 matter?

21 A. I don't think so.

22 Q. Okay. I'm sorry to make you do this, but I need you to
23 look in the notebook that Mr. Schiller gave you, for a second,
24 and specifically tab 19. This is a document that's marked BCI
25 Exhibit 761.

1 A. Yes.

2 Q. And you recall Mr. Schiller asked you this morning about
3 this document, correct?

4 A. Yes.

5 Q. Okay, and this was a sign-in sheet from a meeting held at
6 Boies Schiller's offices, correct?

7 A. Yes.

8 Q. And this is the February meeting which I asked you about
9 just a moment ago, correct?

10 A. Yes.

11 Q. And you see at the top of the sheet the date of this
12 meeting is 2/3/09 -- that's February 3rd, 2009 -- correct?

13 A. Okay.

14 Q. And you'll see on the left there's a list of participants:
15 You'll see Mr. Geer, Mr. Fazio, Mr. Burian, who identify
16 themselves as being from Houlihan Lokey. And you'll see
17 there's even my name at the bottom of the list, correct?

18 A. Yes.

19 Q. And we -- I was present at the meeting. You may or may
20 not rem -- well, do you remember that I was present at the
21 meeting, sir?

22 A. Yes.

23 Q. Okay. At the February 3rd meeting, Barclays did not
24 provide documents that were responsive to the letter that I
25 just showed you, is that correct?

1 A. At the meeting?

2 Q. Yes, sir.

3 A. I think, at the meeting we -- we didn't bring anything to
4 the meeting. I think we brought people to the meeting. That
5 was the -- was the letter that you show -- I shouldn't have
6 closed your binder, but was the letter that you showed me the
7 initiation of the dialogue with Barclays?

8 Q. Right, well, I'll represent to you, sir, the letter was
9 dated December 26, 2008 --

10 A. Right.

11 Q. -- and it was sent by me to Barclays counsel.

12 A. Right.

13 Q. And you may remember that this happened shortly after the
14 JPMorgan settlement in December of 2008.

15 A. Right.

16 Q. Do you remember that?

17 A. Yes, because what I can remember is that -- so I don't
18 think I ever saw the letter. I may have seen the letter, but I
19 don't ever remember -- I don't actually remember seeing it, but
20 I may have seen it; one of my team may have seen it. What I do
21 remember is being told that the creditors' committee had a
22 number of questions, which would be consistent with your
23 letter, and that we had propo -- Barclays had propose a
24 meeting. And that was this, I believe.

25 Q. Okay. Is it fair to say that, for the five-week period

1 from December 26 to February 3rd, 2009, Barclays did not
2 provide any documents in response to the December 26 letter?

3 A. You know, I don't actually know the answer to that. I
4 don't think so, but I don't know the answer.

5 Q. And this morning Mr. Schiller asked you, from and after
6 the meeting on February 3rd, if anybody from the committee or
7 its representatives contacted you directly, and you said the
8 answer to that was no, is that correct? After the meeting.

9 A. After that, I don't think so, no.

10 Q. Okay. Do you know whether committee counsel contacted
11 Barclays counsel after this meeting to request further
12 information?

13 A. I don't know.

14 Q. You don't know -- you don't -- okay.

15 MR. TECCE: Can I have Movants' 372, please?

16 Q. Sir, would you mind turning to M372 in your notebook
17 there? And do -- are you at the document, sir?

18 A. Yes.

19 Q. Okay. And do you see the document is an e-mail from me,
20 again to Ms. Granfield and Mr. Schiller? And this particular
21 e-mail is dated Tuesday, February 10th, 2009, correct?

22 A. Correct.

23 Q. Right, and that would be seven days after February 3rd,
24 2009, after our meeting, correct?

25 A. Right.

1 Q. Okay. And you'll see the text of this e-mail says "Please
2 see the attached letter following up on our meeting last week.
3 Please feel free to contact me with any questions. Thank you."
4 Right?

5 A. Okay.

6 Q. Okay, and if you turn the page, you'll see the actual
7 letter itself, correct?

8 A. Yes.

9 Q. And the letter I -- we won't have to go through the
10 categories of documents again, but I just would direct your
11 attention to this first paragraph: "We write to follow up on
12 our February 3rd meeting and appreciate the spirit of
13 cooperation with which you made representatives of Barclays
14 Capital available to answer our questions. As you know, the
15 creditors' committee has been working to obtain clarity and
16 understanding of the final reconciliation of the sale
17 transaction among Lehman Brothers Holdings Inc., Lehman
18 Brothers Inc. and LB 745 LLC on the one hand, and Barclays on
19 the other hand (the "Sale Transaction"). While the meeting
20 greatly assisted our efforts, there are certain documents that
21 we request Barclays provide in addition to those set forth in
22 our December 2008 letter."

23 That's what that paragraph says, correct?

24 A. Correct.

25 Q. And then you'll see, sir, on the next two pages there's a

1 series of documents that are requested by this letter. Do you
2 agree with that?

3 A. Yes.

4 Q. Okay. Do you know when Barclays provided documents
5 responsive to this particular letter?

6 A. I don't. Actually I don't.

7 Q. Okay. Let's -- can I turn your attention, sir, to
8 BCI-762, which is in our binder?

9 A. Yes.

10 Q. It's in the back. It's actually the last document.

11 A. Yes.

12 Q. This is a document Mr. Schiller showed you this morning,
13 correct?

14 A. Yes.

15 Q. Okay. And this is a document that says at the top titled
16 "Index to Disk of Materials Produced on March 20th, 2009 in
17 Response to Creditors' Committee's December 26, 2008 and
18 February 10, 2009 Requests", correct?

19 A. Correct.

20 Q. Okay. And you don't have any reason to believe --

21 MR. TECCE: Well, strike that.

22 Q. Do you have any reason to believe that Barclays did not
23 produce the documents in response to those requests on March 20
24 as that title says that it does?

25 A. Sorry. Are you asking if --

1 Q. Let me rephrase the question. Does this document help
2 refresh your recollection of when Barclays actually did provide
3 us with documents responsive to those two letters?

4 A. No, showing the letter earlier, it doesn't really. I
5 mean, I can now see that evidently we did provide something,
6 but I really don't have a great deal of recollection about it,
7 to be honest with you. It would have been processed primarily
8 by people who worked with me and for me, and wouldn't
9 necessarily have focused particularly on these responses. But
10 I could see that we did.

11 Q. Do you have an understanding, sir, of whether or not, from
12 and after March 20th, counsel for Barclays and counsel for the
13 committee were involved in discussions concerning the format in
14 which these documents were produced?

15 A. No, I don't know.

16 Q. You do not.

17 A. I should point out that around this time my involvement --
18 for the reasons we were talking about earlier, my involvement
19 with some of these assets was actually being reduced as we were
20 undertaking the transaction that was touched on earlier. So
21 that's why I become a little bit vague as to what was delivered
22 and what wasn't after a certain point.

23 Q. Okay. Sir, can I have you turn to Movants' 375, please?

24 A. Yes.

25 Q. Do you recogni -- have you ever seen this document?

1 A. 375, right? Just the simp -- no, I don't think I have.

2 Q. This is a letter to me from the Boies Schiller firm,
3 correct?

4 A. Yes, I see that.

5 Q. Okay. And the text of the letter is "Following up" -- and
6 the date of this letter is April 23rd, 2009, correct?

7 A. Yes.

8 Q. Okay. It says, "Following up on our discussion, enclosed
9 is a simple printout of selected material. If this is
10 acceptable, we will print out the entire production for you in
11 this format," correct?

12 A. Yes.

13 Q. Okay. Are you aware of any efforts by your team to assist
14 Boies Schiller in changing the format in which the documents
15 that were provided to the committee would be produced to the
16 committee?

17 A. I'm not aware of it, but it is possible. I'm not aware of
18 it.

19 Q. Just briefly, sir, can I ask you to turn to the next
20 exhibit in your binder, which is Movants' 376.

21 A. Yes.

22 Q. Okay. And this is an e-mail string, actually. This
23 contains four e-mails between myself and Mr. Stern of the Boies
24 firm. Do you see an e-mail from me to Mr. Stern on May 12th,
25 2009 at 2:08 -- well, actually let me back up. Starting with

1 the e-mail from Mr. Stern at the bottom, he says "Following up
2 on our discussion, I am told the colored sheets will be used as
3 follows: First, a yellow sheet will be inserted to separate
4 attachments from the cover e-mail and from other attachments.
5 Many of the e-mails we will produce have multiple attachments.
6 In order to signify where one attachment ends and the other
7 starts, we will insert a yellow slip sheet. See production
8 sample BCI-12 to 13.

9 "Second, a blue sheet will be inserted where one tab
10 within an attachment ends and another begins. Most of the
11 attachments we are producing contain multiple tabs within a
12 single attachment. Each tab is a different spreadsheet
13 illustrating different data. See production example BCI-4 to
14 5.

15 "Third, a green sheet will be inserted in order to
16 separate e-mails. See production sample BCI-10 to 11.

17 "I hope that explanation helps."

18 See that text from Mr. Stern?

19 A. Yes.

20 Q. Okay. And then I -- he actually sends me another e-mail
21 on May 12th; he's following up on the e-mail which he sent on
22 April 27, saying "Just following up to see if you still want us
23 to prepare a complete hardcopy set along the lines described
24 below."

25 And then I respond to him that afternoon saying "I'll call

1 you this afternoon to discuss, but we've checked with our FAs.
2 The problem is that, even with the insert sheets, they still
3 can't read the documents as produced, because overflow pages,
4 e.g., other than the first page, don't contain the individual
5 column and row headings on each sheet. They're left trying to
6 piece charts together, while the color-coded sheets show the
7 different charts attached to the different e-mails within the
8 charts, some of which are hundreds of pages long. The row and
9 column legend only appears on the first few pages. Even if
10 they were to cobble the pages together for massive charts with
11 thousands of entries, the assembled pages don't even fit on a
12 conference table."

13 And then Mr. Stern says that "We'll check with our vendor
14 to see if they have any better suggestions."

15 Mr. King, are you aware of whether or not your team, at
16 this point in time in May, had undertaken the task of changing
17 the format in response to this concern with respect to the
18 documents produced to the committee?

19 A. I think -- it's about -- this is around April/May time
20 that my team was split into two, and we moved the team with the
21 people that I left Barclays with into a separate building and
22 separated the asset pool. So it is actually feasible by this
23 time that I wouldn't know. I certainly don't remember. But I
24 might not actually know.

25 Q. Are you aware, Mr. King, that around this time the

1 debtors, Lehman Brothers Holdings, submitted formal
2 applications for documents in discovery from Barclays?

3 A. I'm not, no.

4 Q. You're not aware. Are you aware that in the June time
5 frame the debtors actually came to this bankruptcy court and
6 requested authority to take discovery from Barclays relating to
7 the sale transaction?

8 A. I remember that those episodes occurred. I actually only
9 know about them secondhand, but I don't remember the timing of
10 it.

11 Q. Okay. Can I just direct your attention to M414 in your
12 binder, sir? Actually, also, are you aware that the creditors'
13 committee joined in the request of the debtors for formal
14 discovery when the debtors came to this Court in June of
15 2004 -- 2009?

16 A. Could you say that to me again, sir?

17 Q. I'm sorry. Are you aware that the creditors' committee
18 joined in the debtors' application to this Court for formal
19 discovery from Barclays in 2009?

20 A. I'm not, no.

21 Q. You're not. Are you aware that Barclays objected to that
22 joinder, the joinder of the committee's request?

23 A. I'm not, no.

24 Q. Okay. And so, sir, if I'm looking with you in M414, this
25 is a document entitled "Objection of Barclays Capital Inc. to

1 Propose Joinders in Debtors' Motion for an Order under Rule
2 2004 Authorizing Discovery of Barclays Capital Inc.". Do you
3 see that title?

4 A. Um-hmm.

5 Q. And then in the first paragraph there, it says that
6 "Barclays Capital respectfully objects as follows to the
7 proposed joinders in the motion of Lehman Brothers Holdings
8 Inc. for an order, pursuant to Federal Rule of Bankruptcy
9 Procedure 2004, authorizing it to conduct certain discovery of
10 Barclays. Those proposed joinders include: (1) the response
11 of official committee of unsecured creditors of Lehman Brothers
12 Holdings"; you see that text there?

13 A. Yes, I do.

14 Q. Okay. Can I turn your attention, sir, to page 5 of this
15 document?

16 A. Yes.

17 Q. And there's paragraph 10 there.

18 A. Yes.

19 Q. It says in this paragraph, "After meeting with the
20 committee, Barclays produced to the committee material relating
21 to the securities that Lehman had proposed transferring to
22 Barclays during negotiations and concerning securities which
23 Lehman actually did transfer to Barclays. Barclays' March
24 20th, 2009 production to the Committee responded to the
25 December" -- "the committee's December 26, 2008 and February

1 10, 2009 requests for documents, which largely overlapped. The
2 production included over 16,000 pages of material, including
3 numerous schedules of securities, information concerning
4 residential mortgage securities, the closing memorandum for the
5 sale transaction, and appraisals of transferred real estate.
6 On May 28th, 2009, in response to a creditors' committee
7 request, Barclays provided the electronic Excel files for the
8 spreadsheets in the March 20, 2009 production."

9 Do you see that paragraph, sir?

10 A. Yes.

11 Q. Do you have any reason to dispute any of the assertions or
12 disagree with any of the assertions that are put forth in that
13 paragraph?

14 A. I have no knowledge of that, sir.

15 MR. TECCE: I have no further questions, Your Honor.
16 Thank you.

17 MR. SCHILLER: Your Honor, I'm mindful of the
18 conference. I will be very brief.

19 THE COURT: Fine.

20 REDIRECT EXAMINATION

21 BY MR. SCHILLER:

22 Q. You've used the word "crystallize" before Your Honor and
23 in this record. I'm not sure what it means, I don't know if
24 the judge does, but would you tell him what you mean when you
25 say something will crystallize?

1 A. I'm sorry, I flip backwards and forwards between words
2 like "crystallize" and "realize". I --

3 Q. Crystallize is a new one. What does crystallize mean?

4 A. Crystallize is a new one. Crystallize -- by "crystallize"
5 what I really meant was that, in one way or another, whether it
6 was through sale or structuring or restructuring or just
7 maturity in some form or another, that the expected realizable
8 value was converted into cash receipts for Barclays.

9 Q. So, in part, crystallize means sale?

10 A. Certainly in the majority of cases, that will have meant
11 sale.

12 Q. Okay. You were shown a document dated the 19th, an e-mail
13 to you and Gerard LaRocca from Marty Malloy, concerning the
14 totals for the Fed facility collateral, and you've described
15 that to the Court as a custodial update on Friday. Do you
16 remember that?

17 A. Yes.

18 Q. Is that -- does that mean that the marks on that document
19 were BoNY marks?

20 A. I believe they were all BoNY marks, yes.

21 Q. Could we turn, then, in the movants' book to tab M200,
22 Movants' Exhibit 200?

23 MR. SCHILLER: Which is that document, Your Honor.

24 A. That's the King -- that's my name witness, is it?

25 Q. Yes, exactly. And it's on the screen, if it's easier for

1 you --

2 A. All right.

3 Q. -- Mr. King. And my note says that you said you could not
4 crystallize it for that -- for the values that the BoNY marks
5 reflected. Do you remember that?

6 A. Yes.

7 Q. Do you recall yourself considering the BoNY marks at the
8 time that you had --

9 MR. SCHILLER: Let me strike that.

10 Q. Did you look at the BoNY marks for the repo collateral
11 that you actually received? And have you compared that to your
12 own rough estimates for the values of what you received on the
13 19th?

14 A. As I mentioned previously, the number that was calculated
15 at an early stage to be the valuation adjustment was the
16 difference between the BoNY marks on a certain time and the
17 PMTG estimated valuations.

18 Q. And was your evaluation of the values less than BoNY's on
19 the 19th?

20 A. Yes.

21 Q. Do you remember how much less it was, roughly?

22 A. Well, what I remember is that the cumulative number wasn't
23 as big as this num -- I -- it's funny, I don't remember the
24 BoNY marks being as high as this either. So I think this was
25 because of that time stamp problem that we had and the fact

1 that the inventory of collateral wasn't finalized at this
2 point. So there was a healthy amount of uncertainty at one
3 particular time.

4 What I remember is that around that time my estimate -- or
5 I think it was probably into the weekend -- my estimate was
6 that our valuations were somewhere in the region of two and a
7 half to three billion dollars less than BoNY had attributed
8 to --

9 Q. Two and a half to three million dollars less than BoNY's?

10 A. Two and a half to three million dollars less than BoNY.

11 Q. Of the collateral you actually received?

12 A. Of the collateral we received.

13 Q. With regard to the document -- the e-mail concerning
14 Trace-reportable and the colloquy you had with my colleague
15 about that -- do you remember that?

16 A. Yes.

17 Q. And you mentioned that you were still estimating the
18 portfolio and you were concerned about counterparties knowing
19 what your positions would be?

20 A. Yes.

21 Q. And my friend asked would they know that from Schedule A.
22 You remember that question?

23 A. Yes.

24 Q. Do you know whether Schedule A was filed under seal by the
25 parties' agreement and the order of this Court?

1 A. You know, I remember -- funny, "seal" is not a word that I
2 use very often. I do remember it being discussed in some form
3 or another, but I actually don't know whether it was or wasn't.

4 Q. Thank you. With regard to the Giants bonds -- you were
5 asked a little bit about that -- was Goldman Sachs appointed as
6 a sponsor for a new auction in November 2008. Do you recall?

7 A. Yes, I believe it was, yes.

8 Q. Did that change the value of the Giants bonds?

9 A. It was the appointment of the auction -- there were a
10 number of things that affected the value of the bond: There
11 was the appointment of the agent; there was the ability to
12 reset the coupon; and there was growing speculation that the
13 sponsors of Giants might be interested in buying back the debt,
14 and so -- or refinancing the debt. Those were the three things
15 that happened. So it wasn't just the one.

16 Q. My colleague also suggested to you that this Giants bond
17 had the value on December 31st at its acquisition date. Is
18 that accurate?

19 A. Could -- sorry, could you say that again?

20 Q. Was the December 31st value the same as the value on its
21 acquisition date?

22 A. I don't think so. I think --

23 Q. Were you able to sell those Giants bonds on September
24 22nd, the closing date --

25 A. Well, it didn't --

1 Q. -- for more than fifty to sixty million dollars?

2 A. Well, it didn't -- I don't remember the timing on the
3 Giants bond, and it didn't trade like that. Each -- once
4 Goldman was appointed as agent -- we owned a large number of
5 bonds, so these auction-rate bonds would -- the obligation was
6 that once a period, and they came up on different dates, the
7 securities would be available for auction and the highest
8 bidder, i.e., the person bidding at the lowest yield, would
9 secure some bonds and they would therefore be taken away from
10 us. Literally our bonds would mature and somebody else would
11 get some bonds and, if they didn't clear, then we would just
12 end up keeping some new bonds.

13 So we never sold any. We just reduced -- sorry --
14 increased the yield that we were demanding on the instruments
15 that we held. And after a while, other parties started to bid
16 the bonds away from us, so our securities just matured. That
17 was why I used that word "crystallize". That is why it's not
18 always the case that we sold. Sometimes things just matured.

19 Q. But these bonds were booked in the fifty- to sixty million
20 dollar range, the Giants bonds. Do you remember that?

21 A. At one time, I believe that's right, yes.

22 Q. Were you able to sell them as of September 22nd, the
23 close, at that value?

24 A. I don't -- December 22nd. I don't remember whether we had
25 started to see --

1 Q. Okay, let me correct that question.

2 A. Yeah.

3 Q. Were you able to sell them on December 31st at the value
4 that they had been booked on September 22nd?

5 A. Well, September 22nd we had had them booked at fifty
6 million or so. I think that's right. We would have -- we
7 would have had to have waited for an auction to occur and then
8 they would have been -- and we would have had to have waited
9 for somebody else to bid in the auction at a yield less than
10 us; then they would have matured.

11 Q. So you would not have been able to sell them for fifty- to
12 sixty million dollars on or about September 22nd?

13 A. I don't know -- I don't know the answer to that. We
14 weren't trying to do that. We were waiting for them to mature.

15 Q. Thank you.

16 THE COURT: Is there anything more for Mr. King?

17 MR. SCHILLER: No further questions, Your Honor.

18 MR. TAMBE: No further questions, Your Honor.

19 MR. TECCE: No further questions, Your Honor.

20 THE COURT: Mr. King, you're excused. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: That concludes the evidence for the day.

23 We're going to use the courtroom for the chambers conference
24 that the parties requested yesterday. And I'm going to ask
25 that everybody who is not an essential participant in that

1 conference leave. Someone's going to be the ultimate -- not
2 me. Someone's going to determine if the right people are in
3 the room who knows who the right people should be. And we'll
4 also terminate the phone line for CourtCall, to the extent that
5 there are any people listening by phone. And we'll take about
6 a ten-minute break to give people a chance to get organized.

7 (Whereupon these proceedings were concluded at 4:59 p.m.)
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I N D E X

T E S T I M O N Y

	WITNESS	EXAM BY	PAGE	LINE
	Stephen King	Mr. Schiller	6	23
	Stephen King	Mr. Tambe	92	15
	Stephen King	Mr. Tecce	206	23
	Stephen King	Mr. Schiller	222	19

E X H I B I T S

	NO.	DESCRIPTION	ID.	EVID.
	BCI909	E-mail from Clement Bernard to Stephen King dated 9/15/08 re LBI balance sheet detail as of 9/12		23
	BCI910	E-mail from Jasen Yang to Stephen King dated 9/15/08 re LBI balance sheet detail as of 9/12 -Corporate Equities		23

I N D E X, cont'd

E X H I B I T S

NO.	DESCRIPTION	ID.	EVID.
BCI912	E-mail from Jasen Yang to Stephen King dated 9/15/08 re LBI balance sheet detail as of 9/12 -Corporate Obligations		23
M716	E-mail referencing Schedules A and B		138
M777	E-mail chain between Stephen King and Jasen Yang		155
M792	E-mail from Mr. King to Mr. Yang re prices and risks		184
M782	E-mail from Mr. King to Jonathan Hughes re Trace reporting		189

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB
AAERT Certified Electronic Transcriber (CET**D-486)

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Date: August 27, 2010